

**THE CITY OF KENT, OHIO
COMMITTEE OF THE WHOLE
WEDNESDAY, JULY 11, 2018**

Mayor Fiala called the Committee of the Whole meeting of Kent City Council to order at 7:04 p.m.

PRESENT: Mr. Jack Amrhein; Mr. Michael DeLeone; Mr. Garret Ferrara; Ms. Gwen Rosenberg; Ms. Heidi Shaffer; Mr. Robin Turner; and Ms. Tracy Wallach.

ALSO PRESENT: Mr. Jerry T. Fiala, Mayor and President of Council; Mr. Dave Ruller, City Manager; Ms. Hope Jones, Law Director; Ms. Bridget Susel, Community Development Director; Ms. Melanie Baker, Public Service Director; Mr. David Coffee, Budget and Finance Director; Mr. Tom Wilke, Economic Development Director; Mr. Jim Bowling, City Engineer; Mr. Jeff Neistadt, Health Commissioner; Police Chief Michelle Lee; and Ms. Tara Grimm, MMC, Clerk of Council.

ABSENT: Mr. John Kuhar and Mr. Roger Sidoti

There was 1 item on the Agenda.

1. Consideration of Previous Charter Review Committee Recommendation for Council Recall Procedures
Ms. Wallach began by calling Council's attention to the handout she requested from the Clerk of Council on the current "Recall" language. **(See Attachment #1)**. She proposed putting changes to the language on the ballot this coming fall because it will be less expensive to do so since it is a national election. Ms. Wallach referred to some of the research of minutes she asked Clerk Grimm to perform and wanted to include some of the recommendations found in those minutes into the new Recall Petition language. She also wanted to up the current percentage to 15% of the total registered voters of each Ward if it is a Ward councilperson, 15% of the total registered voters of the whole City if it is a recall of an At-Large councilperson, and to add the requirement of stating a reason if the councilperson did something immoral, unethical or illegal. She did not feel the reason "because" is enough of a reason because that is what voting is for. If someone disagrees with a proposal a councilmember has made or on something they are standing for or pushing through, then that is what an election is for, not a recall.

Mr. Turner asked what happened to this initially. He asked if this did not come out of our Charter Review Committee.

Mayor Fiala replied how the Charter Review Committee recommended it, Council recommended it, but it did not move forward at the time.

Ms. Wallach agreed that we were going to recommend putting it on the ballot but the Motion failed at that time.

Ms. Shaffer recalled how there were some Councilmembers missing and there was one who voted against it plus we had one abstention. Therefore, Council did not have a majority vote to move it forward, but it was clearly the wishes of the majority of the people present at that meeting that day.

Mr. Turner stated "a change like this would require a super majority vote."

Ms. Wallach stated she believes a super majority vote is only at a regular council meeting when voting.

Mayor Fiala reminded Mr. Turner how all they were doing tonight to recommend moving it forward to Council to vote on at the next meeting.

Clerk Grimm added how in the collection of research information she provided to Ms. Wallach, there were several discussions on this topic amongst a few committees with a few motions and votes, one of which failed 4-5.

Mr. Turner is supportive of adopting this, but his issue is by adding conditions, it abdicates or removes from the electorate, their ability to make their own self-determinations on whether or not a councilperson is doing a good job, or not, by having to worry about stating a reason, other than getting those signatures on a petition. He feels this requirement to state a reason and council moving this forward would both be problematic.

Ms. Wallach replied how this is standard for most elected officials that there has to be a reason for them to be recalled on something immoral, unethical or illegal. If they are not doing a good job as a councilperson or not upholding the oath that they took, then that is unethical and is a reason for the citizens to have a recall. For the citizens to have a recall because they don't agree with a councilperson because they don't like them, that is what voting is about. She further clarified for Mr. Turner. Council is not making the decision, it is going in front of the voters and the voters are going to decide if they would like to change our City's Charter to this new format. It is not Council, the only thing we are doing is putting it on the ballot so it is in front of the voters.

Mayor Fiala commented "Good point."

Ms. Shaffer, stated that, in her opinion, and after speaking with the League of Women Voters and other people, they want this. They want the opportunity to vote on a new provision because of the havoc it can create otherwise in destabilizing our city government. There is value to having a stable city government.

Ms. Jones had some concerns about using the language "unethical, immoral or illegal." She envisions lawsuits coming down the pike with that because putting those broad terms in a city's constitution without defining them is going to lead to a lot of problems in a recall section. We also need to verify the percentage of signatures on registered voters because that is something that has been shot down by the Supreme Court. What we need to do is tie a percentage to either a regular municipal election, Mayoral election or gubernatorial election. The Supreme Court doesn't like us to use registered voters, they like us to use actual people who vote.

Ms. Wallach questioned what type of election we could tie it to, which has the most voter turnout.

Ms. Jones stated typically it's going to be a gubernatorial or presidential election.

Ms. Wallach decided she would like it tied to the last presidential election and we can remove the words "immoral, illegal or unethical" because that would require further discussion in the future.

Ms. Jones agreed, but time is not on our side if we want to get this on the ballot this year. She agrees defining those words may be something we want to flush out at a future charter review session.

Ms. Shaffer asked for clarification on still using the 15% because previously it was 20%. The election previous to the recall was so poorly attended that 20% was just a handful of people in some of our wards. She agrees we need to use a presidential election, but not necessarily lower the percentage to 15%. She thinks the problem how was it was tied to the primary that virtually had nothing on the ballot. She is okay with removing the language for the three causes because she believes Council has the ability to remove somebody for illegal behavior.

Mayor Fiala commented "We do."

Ms. Shaffer continued to state how what bothers her is that the reason for the recall didn't need to be stated. It should be required to have a stated reason on the petitions. The reason for the last petition was because Council "did not listen to them." That reason is so vague and was unfair to the people who signed the petition.

Mr., Turner gave a bit of history on this topic. He was part of the Charter Review Committee and can remember putting forward the topic of the recall and hearing crickets chirp. At that time, the League of Women Voters did not see a big issue and three years later after he had brought it forward, it actually occurred. So who is for it or against it is really not that relevant. What is relevant is *who* is going to judge what someone puts on that petition is valid. Some issues are for the courts. Ultimately the people make the determination, irrespective of the time, if they decide they want a change in their representation in the middle of a term or after 6 months, he believes they can do it. We are putting ourselves in a situation where this is a very tricky dance and slippery slope when asking for what a person has done allegedly. He wants to know who makes the initial determination in whether or not if the petition being distributed is valid.

Ms. Shaffer thinks the Board of Elections reviews the petitions. Some reference has to be written down to what Council didn't listen to. We did indeed listen, but doesn't mean we followed what some people suggested us to do. The people they were gathering signatures from did not know why they were signing a petition other than what was verbally told to them.

Mayor Fiala commented that it was not in the wording of the petition.

Ms. Shaffer and Ms. Wallach both replied "It was not."

Ms. Shaffer knows "the reason" was not on the petitions, she felt it was unfair to the people signing petitions to not have any knowledge or statement that had been approved. She believes the Board of Elections can do that.

Mayor Fiala would like to believe the Board of Elections would come back to see if the wording is proper.

Mr. Amrhein feels we don't put in the 3 reasons if immoral, unethical or illegal and just say it needs to be 20% of people who voted in the last presidential election. It is far easier and we do not run into these legal problems.

Ms. Wallach felt there should still be a reason stated. If there is a petition going around to recall a councilperson and they don't even know what's going on, how can they correct their behavior?

Mr. Turner stressed how this is going to be problematic. People are passing around what their opinion is of what you may or may not have done wrong. He commented that both he and Ms. Shaffer thought that Council was doing a great job, but based on the recall there were some people who thought otherwise. He doesn't even know if the verbiage or language used on something like that is even legal. That's why we leave that blank. A petition being passed around with that kind of language could be heresy. There was no validity to what the claims were on the last petition, but they had the right to bring it forward. The public has a responsibility to be paying attention, know what is going on and not just go and sign a petition. We have to require more of our constituents. He would like the threshold of the number of people signing a petition to be really high because they are trying to overturn an election.

Ms. Shaffer asked that it be reflected in the minutes that "she did NOT say that we were doing a good job. I said that we listened to people, which was actually the truth. We listened to people but we did not necessarily act; we did not necessarily carry through in our actions what some people had asked us to do. That is very different than saying that we did a good job. That is for somebody else to judge."

Mr. Turner apologized to Ms. Shaffer.

Ms. Wallach asked Ms. Jones if there is going to be a problem if we do specify it and if it needs to be vague.

Ms. Jones asked for clarification if she was referring to the petitions themselves because she would like to do some research on that because she has not been asked that question before. If she were the one filing for the petition, she may not want to put adjectives in her petition that might get her sued later by the person if they do not like the words she's used. She understands time is of the essence.

Ms. Shaffer's concern is if we authorize this to move forward to Council, will we have time to adjust the language based on what Ms. Jones brings forward.

Ms. Jones replied "Yes."

Ms. Wallach would like a Committee meeting before next week's Council meeting so Ms. Jones has more than 2 days to research before the next agenda is due for the meeting on the 18th.

Ms. Wallach would like the percentage increased to 25% of the voters who voted in the last presidential election.

MOTION TO AUTHORIZE A SPECIAL MEETING OF THE COMMITTEE OF THE WHOLE ON JULY 18, 2018 TO DISCUSS AND AUTHORIZE VERBIAGE FOR INCREASING THE PERCENTAGE OF PETITION SIGNATURES TO 25% OF THE MOST RECENT PAST PRESIDENTIAL ELECTION TO THE CITY'S CHARTER RECALL PROCEDURE TO BE ADDED TO THE BALLOT FOR THIS FALL'S ELECTION, WITH AN EMERGENCY CLAUSE made by Ms. Wallach, seconded by Mr. DeLeone.

Mr. Turner requested the motion be read back before voting.

Clerk Grimm read the motion back to Council: MOTION TO AUTHORIZE A SPECIAL MEETING OF THE COMMITTEE OF THE WHOLE ON JULY 18, 2018 TO DISCUSS AND AUTHORIZE VERBIAGE FOR INCREASING THE PERCENTAGE OF PETITION SIGNATURES TO 25% OF THE MOST RECENT PAST PRESIDENTIAL ELECTION TO THE CITY'S CHARTER RECALL PROCEDURE TO BE ADDED TO THE BALLOT FOR THIS FALL'S ELECTION, WITH AN EMERGENCY CLAUSE.

Mr. DeLeone asked what time we will start the meeting.

Mayor Fiala stated we will start the Special Committee meeting at 7:15 p.m.

MOTION CARRIED by a voice vote of 7-0.

Hearing no further business before this Committee, Mayor Fiala adjourned the meeting at 7:47 p.m.

Tara Grimm, MMC
Clerk of Council

ACTION RECOMMENDED:

- 1) DISCUSS AND AUTHORIZE VERBIAGE FOR INCREASING THE PERCENTAGE OF PETITION SIGNATURES TO 25% OF THE MOST RECENT PAST PRESIDENTIAL ELECTION TO THE CITY'S CHARTER RECALL PROCEDURE TO BE ADDED TO THE BALLOT FOR THIS FALL'S ELECTION, WITH AN EMERGENCY CLAUSE**

5.15 RECALL PETITION AND ELECTION.

The electors shall have the power to remove from office by recall election any elected officer of the City. If an elected officer shall have served for six months of a term, a petition demanding such officer's removal may be filed with the Clerk of Council who shall note thereon the name and address of the person filing the petition and the date of such filing. Such petition shall be signed by at least that number of electors which equals 20% of the total number of votes cast at the next preceding regular municipal election in the City of Kent. In the case of a ward council person the required number of electors shall equal 20% of the total number of votes cast in that ward at the next preceding regular municipal election. Within ten days after the day on which such petition shall have been filed, the Clerk shall determine whether or not it meets the requirements hereof. If the Clerk shall find the petition insufficient, the Clerk shall promptly certify the particulars in which the petition is defective, deliver a copy of this certificate to the person who filed the petition, and make a record of such delivery. Such person shall be allowed a period of twenty days after the day on which such delivery was made in which to make the petition sufficient. If the Clerk shall find the petition sufficient, the Clerk shall promptly so certify to the Council, shall deliver a copy of such certificate to the officer whose removal is sought, and shall make a record of such delivery. If such officer shall not resign within five days after the day on which such delivery shall have been made, the Council shall thereupon fix a day for holding a recall election, not less than sixty nor more than seventy-five days after the date of such delivery. At such recall election this question shall be placed on the ballot: "Shall (naming officer) be allowed to continue as (naming the office)?" with provision on the ballot for voting affirmatively or negatively on such question. If a majority of the votes cast at such election shall be voted affirmatively, such officer shall remain in office. If a majority of the votes cast shall be voted negatively, such officer shall be considered as removed, the office shall be deemed vacant, and such vacancy shall be filled as provided in this Charter. The officer removed by such recall election shall not be eligible for appointment to the vacancy created thereby. (Amended 11-6-90.)

**THE CITY OF KENT, OHIO
FINANCE COMMITTEE
WEDNESDAY, JULY 11, 2018**

Chair Michael DeLeone called the meeting of the Finance Committee of Kent City Council to order at 8:52 p.m.

PRESENT: Mr. Jack Amrhein; Mr. Michael DeLeone; Mr. Garret Ferrara; Ms. Gwen Rosenberg; Ms. Heidi Shaffer; Mr. Robin Turner; and Ms. Tracy Wallach.

ALSO PRESENT: Mr. Jerry T. Fiala, Mayor and President of Council; Mr. Dave Ruller, City Manager; Ms. Hope Jones, Law Director; Ms. Bridget Susel, Community Development Director; Ms. Melanie Baker, Public Service Director; Mr. David Coffee, Budget and Finance Director; Mr. Tom Wilke, Economic Development Director; Mr. Jim Bowling, City Engineer; Mr. Jeff Neistadt, Health Commissioner; Police Chief Michelle Lee; and Ms. Tara Grimm, MMC, Clerk of Council.

ABSENT: Mr. John Kuhar and Mr. Roger Sidoti

There were three (3) items on the Agenda.

1. Approve the City Tax Code Update

Mr. Coffee and Ms. Jones informed Council how there was a 2015-2016 income tax code change for the state. We now have to update our Code to comply with the state. Net profit taxes can be filed with the state instead of municipalities.

Ms. Wallach asked about the lawsuit.

Ms. Jones stated "we lost"; there were 2 suits filed in Franklin County. When the attorneys read the opinion, they did not appeal.

Mr. Coffee further explained it is an option to file net profit through the state, but do not have to. Very few have opted for filing through the state.

Ms. Shaffer asked if the state gets a cut.

Mr. Coffee responded "well they don't do it for free." The fee structure is favorable, but there is loss of our direct control. It is early in the process and we do not know how it will work out as there is slow remittance. It is out of our hands, but we need to bring the City's Tax Code current. He further stated there is an "out" clause by RITA if the law changes.

Ms. Jones clarified it is listed in Section 187.27(D).

Council nor the audience had questions.

MOTION TO AUTHORIZE THE AMENDMENT TO KENT CODIFIED ORDINANCES SECTION 187 TO COMPLY WITH THE STATE REQUIREMENTS FOR INCOME TAX CODE UPDATE WITH AN EMERGENCY CLAUSE made by Mr. Amrhein, seconded by Ms. Wallach, and CARRIED by a voice vote of 7-0.

2. Authorize the Sale of Surplus Property

Mr. Ruller joked about having an old police station for sale this month and how Chief Lee said there will be

damage if not moved out by the end of this month. These items are old stuff; we sell surplus property once a year on-line to reach a broader audience.

Ms. Baker referred to her Memo to the City Manager dated July 3, 2018 containing a list of the items. She has a hold and reserve on the larger items. She is requesting Council's approval so the auction can take place late August or September.

Ms. Wallach asked are we why we're not moving the items to the new building.

Ms. Baker stated the new building has new furniture. These items are not worthy of moving. She has opened up the items to other departments for their use.

Council nor the audience had questions.

MOTION TO AUTHORIZE THE AUCTION AND SALE OF THE CITY'S SURPLUS PROPERTY WITH AN EMERGENCY CLAUSE made by Mr. Ferrara, seconded by Mr. Amrhein, and CARRIED by a voice vote of 7-0.

3. Authorize the City Bond Anticipation notes renewal.

Mr. Ruller stated we need to renew the City's outstanding debt issues and how the short-term rates have been working for us.

Mr. Coffee referred to his Memo to the City Manager dated June 26, 2018 for where he is requesting authorization of 4 separate Ordinances related to the debt coming due August 23, 2018. We had 5 and we are reducing it down to 4. He referred to the safety center and how we need to pay it down further and not bond out more than we need to. He is pleased with the maintenance schedule and favorable short-term rates.

Ms. Wallach asked if we pay these once a month like a regular bill.

Mr. Coffee answered "no", we pay them annually at the time of maturity and the bonds we pay semi-annually.

Ms. Shaffer asked how much we have paid over the terms of theses. Are we capable of paying?

Ms. Coffee was at a loss to be able to recall the exact amount but is in excess of \$3-3.5 million.

Mr. Ruller stated they can get that information and email it to Council.

Ms. Shaffer asked if they could also include the number of years we are paying.

Council nor the audience had questions.

MOTION TO AUTHORIZE THE RENEWAL AND NEW ISSUE OF CITY DEBT AND RELATED NOTE ISSUE ORDINANCES WITH AN EMERGENCY CLAUSE made by Ms. Shaffer, seconded by Mr. Amrhein, and CARRIED by a voice vote of 7-0.

Ms. Wallach questioned the safety center and if we upped the taxes, we still had to borrow and extra \$3 million.

Mr. Coffee replied how it was part of our original plan and bonded out on 2 separate occasions a flexible amount with project completion and are repaying.

Chair DeLeone adjourned the meeting at 9:08 p.m.

Tara Grimm, MMC
Clerk of Council

ACTION RECOMMENDED:

- 1) AUTHORIZE THE AMENDMENT TO KENT CODIFIED ORDINANCES SECTION 187 TO COMPLY WITH THE STATE REQUIREMENTS FOR INCOME TAX CODE UPDATE WITH AN EMERGENCY CLAUSE**
- 2) AUTHORIZE THE AUCTION AND SALE OF THE CITY'S SURPLUS PROPERTY WITH AN EMERGENCY CLAUSE**
- 3) AUTHORIZE THE RENEWAL AND NEW ISSUE OF CITY DEBT AND RELATED NOTE ISSUE ORDINANCES WITH AN EMERGENCY CLAUSE**

7 Person Spider Bike
4'H x 6'W x 8' L. (400 lbs.)



Ohio Revised Code 4301.62

(F)

(1) Except if an ordinance or resolution is enacted or adopted under division (F)(2) of this section, this section does not apply to a person who, pursuant to a prearranged contract, is a passenger riding on a commercial quadricycle when all of the following apply:

(a) The person is not occupying a seat in the front of the commercial quadricycle where the operator is steering or braking.

(b) The commercial quadricycle is being operated on a street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

(c) The person has in their possession on the commercial quadricycle an opened container of beer or wine.

(d) The person has in their possession on the commercial quadricycle not more than either thirty-six ounces of beer or eighteen ounces of wine.

(2) The legislative authority of a municipal corporation or township may enact an ordinance or adopt a resolution, as applicable, that prohibits a passenger riding on a commercial quadricycle from possessing an opened container of beer or wine.

(3) As used in this section, "commercial quadricycle" means a vehicle that has fully-operative pedals for propulsion entirely by human power and that meets all of the following requirements:

(a) It has four wheels and is operated in a manner similar to a bicycle.

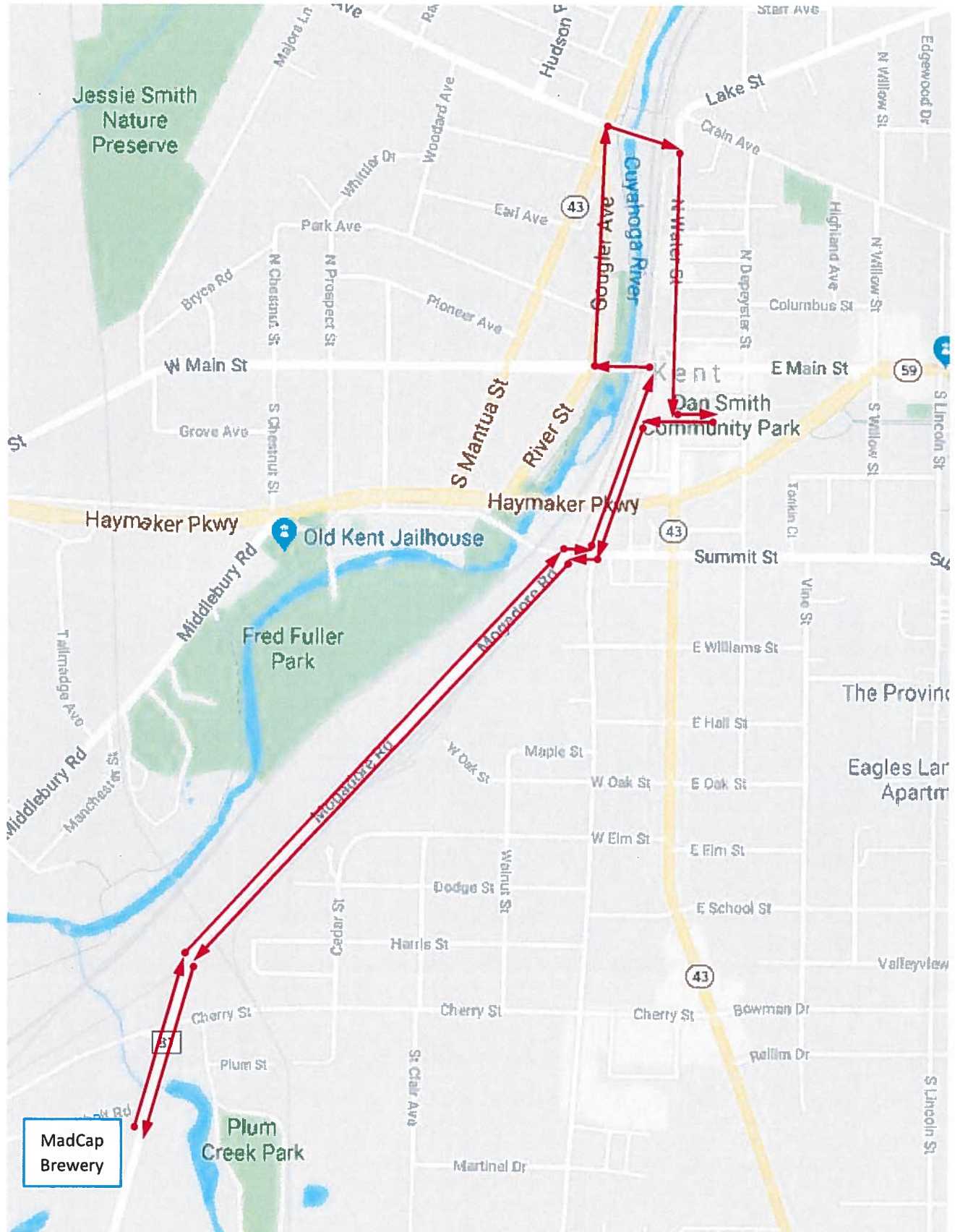
(b) It has at least five seats for passengers.

(c) It is designed to be powered by the pedaling of the operator and the passengers.

(d) It is used for commercial purposes.

(e) It is operated by the vehicle owner or an employee of the owner.

Proposed Cycle Tour Route





Cleveland ▾

Cleveland Cycle Tours Manage This Listing

●●●●● 145 Reviews

#1 of 21 Outdoor Activities in Cleveland

Bike Tours, Outdoor Activities, Tours

📍 2061 Gehring Ave, Cleveland, OH 44113-4120

☎ +1 440-532-9995

🌐 Website

✉ Email



Review Highlights

"Fun time!"

I went with a group of friends for a bachelorette party and had a blast during the downtown... [read more](#)



●●●●● Reviewed yesterday

Cory K

"Corporate Team Building Outing Tak..."

this was a great way to have a fun team team outing that involves physical activity, team building... [read more](#)



●●●●● Reviewed 4 days ago

mszeghy11, Aurora, Ohio

[Read all 145 reviews](#)



📷 All photos (41)



Overview

Reviews

Location

Q&A

Overview

Cleveland Cycle Tours, "the ultimate group party bike", offers a pedal-powered excursion that ... [More](#)

5.0 ●●●●●

145 reviews

Excellent	93%
Very good	6%
Average	1%
Poor	0%
Terrible	0%

TRAVELERS TALK ABOUT



"ohio city" (51 reviews)



"pub crawl" (8 reviews)



"great driver" (3 reviews)

🕒 **Open Now** Hours

Hours Today: 10:30 AM - 10:30 PM

🕒 Suggested Duration: 2-3 hours

LOCATION

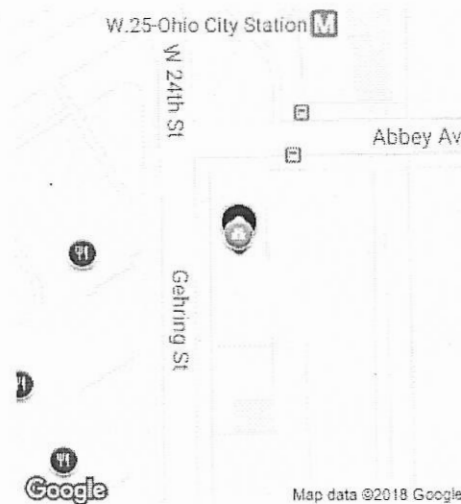
📍 2061 Gehring Ave, Cleveland, OH 44113-4120

CONTACT

🌐 Website

☎ +1 440-532-9995

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Map data ©2018 Google



Cleveland Cycle Tours' TripAdvisor Reviews

"Cleveland Cycle Tours was the best afternoon activity! We had a group of 5 girls and we did the Spider Bike and it was PERFECT! A little more intimate than the big bike, or if you don't have as many people – but equally as fun! The family was extremely accommodating to find the best fit for us, and it worked out great. Adam, our driver, was so nice and fun! Definitely made the tour even better. Highly recommend this!" - MaryA9019

"My wife and I had family in from Dayton and took a chance on a spider bike in Tremont. Mark was our driver, and we had a great time from beginning to end. The folks booking the trip and giving us background on our locations were very cordial and treated us great! My wife and I are already looking to go back and book another trip. Definitely recommended!" - Josh H.

There were six of us going and when they recommended the Spider Bike I saw the picture and thought it was too cramped for all of us but booked it anyway. I couldn't have been more wrong!! We had plenty of room for us and our cooler. There were cup holders and a Bluetooth speaker. We had so much fun, our driver was great and super fun!! I would highly recommend anyone looking for an outing in Cleveland to check this out!" - mlittle82

"We had a BLAST! And Adam, our tour guide, was awesome too! We left and are planning to book one again in August! Ohio City was beautiful and can't wait to check out another. 100% recommend! Can't wait to try the bigger bike! Thanks again for having us!!" - evanscara13

"We had a group of 21 on the Tremont Tour, one 15 passenger bike and one 6 passenger Spider bike. The CCT staff was easy to work with and their drivers were very friendly and accommodating. We plan on making this an annual event for our group." - 874bill

**THE CITY OF KENT, OHIO
HEALTH & SAFETY COMMITTEE
WEDNESDAY, JULY 11, 2018**

Chairman Jack Amrhein called the meeting of the Health & Safety Committee of Kent City Council to order at 8:02 p.m.

PRESENT: Mr. Jack Amrhein; Mr. Michael DeLeone; Mr. Garret Ferrara; Ms. Gwen Rosenberg; Ms. Heidi Shaffer; Mr. Robin Turner; and Ms. Tracy Wallach.

ALSO PRESENT: Mr. Jerry T. Fiala, Mayor and President of Council; Mr. Dave Ruller, City Manager; Ms. Hope Jones, Law Director; Ms. Bridget Susel, Community Development Director; Ms. Melanie Baker, Public Service Director; Mr. David Coffee, Budget and Finance Director; Mr. Tom Wilke, Economic Development Director; Mr. Jim Bowling, City Engineer; Mr. Jeff Neistadt, Health Commissioner; Police Chief Michelle Lee; and Ms. Tara Grimm, MMC, Clerk of Council.

ABSENT: Mr. John Kuhar and Mr. Roger Sidoti

There were two (2) items on the Agenda.

1. Consideration and Authorization of Health Board Recommendations for T-21 "Tobacco" Legislation.

Mr. Ruller stated Mr. Neistadt was here tonight to follow up on the some of the initiatives Council may have seen around the region as some of the larger cities have adopted the T-21. He believes it has been about 2 years since Dr. Warren advised him that the Kent State campus was going smoke-free and was encouraging the City to raise the purchasing age. He stated Mr. Neistadt has provided information from the American Red Cross reaffirming their position and strongly supporting raising the age given the health risks and research trends.

Mr. Neistadt commented that as a Health Department they have been working on this for well over a year now as it takes a lot of effort and wanted to get citizen feedback. Tobacco related deaths are the #1 preventable death in America. 75% of adults nationally and 76% locally agree with raising the age to 21. 95% of those stated the started using tobacco products before the age of 20. Vapor products are the new trend in high schools with an increase of 900% over the last 4 years. With all the flavors out their now, the "juice" can contain 3 times more nicotine than the average cigarette. Youth addicted to nicotine are 7 times more likely to abuse drugs. \$1 million a day is spent on advertising in Ohio; \$5.6 billion a day in medical costs. Even the residents of KentWay who were surveyed who are heavy smokers gave their full support because they started when they were 16 or 17, and now that they are in their 70's & 80's, they are still smoking. 93% of all tobacco is advertised to youth; unique vaping devices are being created almost overnight - "jewels" look like mini flash drives; they are getting more creative. The proposal is to restrict the sale of tobacco and tobacco related and vaping products to age 21 and over. Military is going to ban all tobacco products on their bases. There is a national push. Over 290 cities nationally and 10 cities in Ohio have enacted T-21 legislation, including Akron recently. The Health Department discussed with our Law Director and Police Chief whether there should be civil or criminal penalties similar to the sale of alcohol. This Ordinance will have civil penalties with the first violation could be a fine, second violation being a \$500 fine and third violation being a \$1,000 fine. Whatever monies are collected will go back into education and cessation programs.

Ms. Rosenberg had a couple of questions. She attended Mr. Neistadt's public forum and thanked him for that. She asked what is being done now to enforce the age of 18.

Mr. Neistadt stated there are spot checks that are being done throughout the state. If we raise the age to 21 we will be performing an increased amount of spot checks as they have received grant funding to do that.

Ms. Rosenberg clarified how right now our Health Department is not currently performing spot checks, but if this passes they will then have the ability to go to retailers to make sure they are abiding by it and how the penalties is on the seller, not the person who purchased it.

Mr. Neistadt replied "Correct."

Ms. Rosenberg felt Mr. Neistadt's presentation she attended was well done because overwhelmingly, this is being marketed towards children. We know it is a highly addictive substance and our federal government has not done a thorough investigation; we do not know what is in it. She supports this Ordinance as a preventative measure from getting cancer.

Mr. Neistadt stated vaping is being marketed as a safer alternative, but we do not know that for a fact.

Ms. Wallach feels it is a good idea to raise the age to 21 but she is not going to support it because she feels the inconsistency with age in students and adults is wrong. To be considered an adult at 18 and be prosecuted as an adult at 18, to be able to be drafted at 18, be able to fight and die at 18 and not be afforded all the other privileges of being an adult is unfair. She thinks we should raise our age of adulthood to 21 also so we can be consistent.

Mayor Fiala commented that he attends the MAAPS meetings which include Portage, Stark and Summit County Mayors, who have stated they have already done this or are going to do it. He feels it is a sound idea for Kent to do this and also is glad the vapor products are being included. He asked if we pass local laws or if there are state laws that help support this.

Mr. Neistadt replied that this is a local movement as of now. The state is looking at it. He would like us to get out ahead of it and make it work for us instead of waiting for the state to tell us what we are going to do.

Mr. DeLeone reiterated that the penalty goes to the person selling the products, so a 16 year old kid can still go around smoking. There is no penalty to the kid.

Mr. Neistadt stated he was correct. A friend or relative could have purchased them and he's not going to go around spot checking kids.

Ms. Shaffer asked if they have to be caught in the act of selling.

Mr. Neistadt replied that is what the spot checks are for. We are going to do a lot of education initially. Sellers are going to know, they are state licensed to sell tobacco. If they violate, it that could be their livelihood and have to close up shop.

Ms. Shaffer wondered what a spot check would look like. She will support this because the intention is good. She has some concerns about a few particular businesses and if it is going to be enforced evenly.

Mr. Neistadt compared it to a secret shopper type of concept and they will be enforcing it evenly. There is a standard across the board.

Mr. Ferrara called a POINT OF ORDER to keep with just questions.

Mayor Fiala asked if the sellers of the products are going to have to register.

Mr. Neistadt stated yes, they are doing a registration so we will know who is selling them. It is a lot easier in Kent because we already know who is selling them because they are out in the field all day.

Mr. Amrhein referred to the audience.

Ms. Wendy Hyde with the Preventing Tobacco Addiction Foundation, a non-profit advocacy organization who works on the national, state and local levels to encourage local municipalities to raise the tobacco purchasing age from 18 to 21... (Some parts are inaudible as she was not close enough or walking away from the microphone.) This ordinance is meant to restrict youth access. She told a story about being a health educator to middle school students and how 4 years ago, her son asked her if she knew what "vapes" are. Her 13 year old son informed her that someone was selling them out of his locker for \$10. She realized adults do not know what they are, but kids do. A pack of cigarettes has been reinvented into a nicotine delivery device system. If you ask a kid if they smoke, the answer is no, but if you ask them if they vape, at least 1 out of 2 or 3 kids say yes they vape. Ms. Hyde showed what a "jewel" looks like that she bought here in town and was carded for. It looks like a small flash drive and if a

kid takes a hit from it, it doesn't have the typical vape cloud and may have a hint of the juice smell that can be mistaken as someone's perfume. She reference a story of one of her son's classmates getting caught using it as he sat in front of his Chromebook because everything is being recorded in the school. We are trying to protect our youth from this because it's about nicotine not just tobacco anymore. Nicotine addiction affect an adolescent brain which is not fully developed until age 25. Every day our youth has access to 18 year olds in school and on school buses. They do not have access to 21 year olds. Youth adolescent addiction to nicotine greatly increases their risk of depression, 22 % of youth smokers suffer from depression. In Portage County alone, 38% of the youth that attempted suicide were current tobacco users vs. 7% of non-tobacco users. 18-21 year olds are only 2% of the sales but provide 90% of it to the youth for use. The economic impact on a community is minimal, 2%. The impact of health on youth in the community is 90%.

Mayor Fiala commented how Ms. Hyde makes the subject very interesting and is very good at what she does.

Mr. Tim Lewis of 140 Fairfield Drive, Kent who also represent the American Heart Association, who works as a community health director and works with the board of Summit and Portage counties, thanked our leadership for building health in our community as well as thanked the Health Department for their leadership initiative.

Council nor the audience had and further questions.

MOTION TO AUTHORIZE THE PROPOSED RECOMMENDATION FROM THE HEALTH BOARD TO ENACT CHAPTER 527 ON THE CODIFIED ORDINANCES CHANGING THE PURCHASING AGE FOR TOBACCO AND TOBACCO PRODUCTS FROM AGE 18 TO AGE 21 WITH AN EMERGENCY CLAUSE made by Mr. Ferrara, seconded by Ms. Rosenberg.

Mr. Ferrara heard what Ms. Wallach had to say about the age discrepancy but feels it is a good thing in terms of protecting the youth from a harmful substance. If we wait until everything turns to 21, then we've wasted an opportunity to save certain people from nicotine and tobacco.

Ms. Rosenberg concurs with Mr. Ferrara. She feels it is important to put greater distance between the age where 18 year olds have access to our youth, as well as the specific marketing to our youth by these companies. These are dangerous chemicals that are being marketed to children who do not have the mental faculties to be wary of things like this.

Ms. Shaffer agrees with the intention but disagrees with the immediate impact on sectors of our economy. There are a huge number of 18-21 year olds in our community, but the benefits outweigh that.

MOTION CARRIED by a voice vote of 6-1 with Ms. Wallach voting "No."

2. Receive Staff Report on Downtown Cycle Tours

Mr. Ruller commented on how nothing says Kent better than something quirky, new and different. When Mr. Wilke first brought this to his attention, the picture seemed very "Kent-like". The staff has done their market research, have talked to people and were informed to go to Kent. This is something we can work with and we have talked to our Police and technically the law allows them to bring the cycle tours here right now. They are here as a good faith gesture to make sure the community understands what they are all about.

Mr. Wilke introduced Mike and Carol Stanek who have owned and operated Cleveland Cycle Tours since 2013 and have been very successful in 3 neighborhoods up there. They are looking to expand their footprint and make this more convenient for people in Akron, Canton, and Youngstown with Kent being right in the middle. There was a meeting with Mr. Wilke, the Staneks, Chief Lee, Capt. Prusha, Mr. Wicks and Heather Malarcik of Main Street Kent where all questions were answered and discussion was had to bring this forward to present to Council. Mr. Wilke referred to the pictures in the Memo to the City Manager dated July 3, 2018 and a handout Council received from the Staneks (**See Attachment #1& #2**) depicting the spider bike which, in the corporate world, is known as a "quadricycle." They are considering bringing 2 bikes to Kent. It was brought to Mr. Wilke's attention at that meeting how the Ohio Revised Code has made an exception for commercially operated quadricycles for at least 5 passengers, they can have open containers while on the bike which is an exception to the open container law, and

each passenger can bring 36 oz. of beer or 18 oz. of wine with them as long as they are on the bike. An employee, who is not allowed to drink, will be driving and steering the bike on its tour through the City. The Ohio Revised Code does allow for local municipalities to take away that exception to the ORC and pass their own legislation upholding the open container law and not allowing the exception. That would be Council's choice. After that meeting, the Staneks reached back out to Chief Lee to discuss a possible tour route which is depicted in **Attachment #1**. They have not tested this proposed 3.2 mile route which would last about 2 hours travelling at 9-10 mph and making stops for photo opportunities and at local bars.

Ms. Wallach asked how this will impact traffic flow because they are big.

Mr. Wilke commented on how bikes and Amish buggies are on the roads and people have learned to go around them.

Chief Lee stated they also took that into consideration with the route. We are supposed to share the road with bicycles. There may be some slowdowns, but there will be opportunities for the bike to move over out of the way or for people to pass the bike.

Mayor Fiala was concerned about the hours of operation as it will start getting darker earlier and Water Street is dark at night.

Mr. Wilke apologized for that not being in the Memo and stated in their current operations the bike is off the road by 10:30 p.m.

Mr. Wilke referred to the Staneks.

Mr. Stanek stated they are off the road by 10:30 and the bikes have headlights and rear lights.

Mr. Ruller asked for clarification on Ms. Wallach's question and how their operators deal with traffic.

Mr. Stanek was very appreciative of everyone who meet with them. Their drivers always allow traffic to go by and will move over. They always keep as far to the right of the road as they can. Most of the bikes they operate now are 15 person bikes and go about 7-8 mph. The 5 person bikes go 10-12 mph and are a bit more maneuverable. They currently run on West 25th Street and Lorain Road in Cleveland and it has not been a problem. In Cleveland, they have to be off the streets by midnight, but they have chosen to be off the streets by 10:30 p.m. They are open to any hours the City of Kent would like for them to operate. Their earliest outings start at 10:30 a.m. Also the bikes have headlights as well.

Mayor Fiala stated in the pictures, the headlights are not very substantial and Mogadore Road is very dark at night.

Ms. Stanek added the drivers will be wearing reflective vests.

Mr. Ferrara commented on the familiarity in the City and the safety knowing that the bikes are also out there.

Mr. Stanek further stated how they operate out of 3 Cleveland areas including Ohio City and Tremont. People become quickly aware as you can't miss the bikes. From a traffic standpoint, the biggest concerns were the buses, but we have not had an issue with them. They actually honk and wave.

Ms. Shaffer asked about the impact on taxes in the city. Would they be paying taxes just like any other business?

Mr. Wilke clarified there would be withholding tax on the employees and net profit tax.

Mr. Ruller commented on how this is just another way we distinguish ourselves as a really great place and will have a trickle effect. The tour may last 2 hours, but for another 3 hours they could be visiting other spots downtown.

Mr. Stanek stated that about 80% of their customers will visit a local restaurant either before or after their outing.

Ms. Stank added that this will bring people to the City who normally would not visit, just for the experience.

Mr. Ferrara asked if they only run when tours are booked.

Mr. Stanek replied how all of their tours are pre-booked on-line or over the phone so they can schedule their drivers. There will be a maximum capacity of 12 between the 2 bikes. They have only been running the smaller bike for about a year so they are still learning their clientele.

Mr. Ferrara asked if they will be looking for local drivers.

Mr. Stanek commented on how, not to be presumptuous, they have already started advertising for drivers through the college, but with school not in session, it has been a bit more challenging.

Mr. Ferrara confirmed they have 2 bikes committed to Kent.

Mr. Stanek stated yes, it is a \$30,000 investment and should the City of Kent decide this is not for them, they would redeploy the bikes elsewhere.

Mr. Ferrara asked about other cities regulations. He questioned if they are being regulated or are working within the confines of the ORC.

Mr. Stanek commented on how they are currently only in Cleveland, which has a business registration and a driver registration requirement. They carry a \$2 million liability policy that is extended to the City, all of their drivers are passed through their insurance company. He knows Put-In-Bay did restrict the alcohol, which surprised him, but that is a different company that runs up there.

Mr. Ferrara asked if they were the first in Cleveland and if there has been any competition with things like bike taxis.

Mr. Stanek replied how they are the *only* in Cleveland; but there are pedi-taxis and single bike tours and how their bikes are different from them serving 2 different markets. It is also very challenging to find storage locations for the larger bikes and have a shorter season with the weather in Cleveland. They do very little in December, January and February.

Mr. Turner asked about the short season.

Ms. Stanek stated they will run 12 months a year which is road condition dependent; salt will damage the chains so they won't run when there is salt, heavy snow, or ice on the roads.

Mr. Turner thanked them for coming to Kent and feels they are an excellent fit.

Mayor Fiala still had safety after dark concerns. He questioned if they would object to putting LED flashing yellow lights on the bikes.

Mr. Stanek replied the rear light on the bikes in Cleveland flashes. They have just taken delivery of the bikes for here in Kent and are unsure if the manufacturer's rear light flashes yet.

Ms. Stanek stated they replace the manufacturer's lights with a flashing light. They have small LED headlights too.

The Staneks are open to whatever would make City Council comfortable when it comes to safety and also install slow moving vehicles signs and continue to use the reflective vests on their drivers.

Ms. Wallach commented on how about once they get this going, a route between the university and downtown would be nice.

Ms. Stanek felt the challenge they had was finding really flat routes. They were surprised how "hilly" Kent was.

Mr. Amrhein referred to the audience.

Ms. Barb Tittle of 909 Middlebury Road, Kent reminded Council about the specific law that we need to share the road with bikes because they can use the whole lane at any time on any road but is unsure if that includes quadricycles.

Ms. Debbi Redman of 141 S. Mantua St., Kent stated she is a school bus driver and already has a problem with single bike drivers, especially when she has to stop for the tracks near Middlebury. She is concerned about the visibility and width of Fairchild Bridge she drives every day. There is also a lot of truck traffic and a gravel berm. She thinks the idea is great, but the route area is her concern.

Ms. Shaffer questioned the weekday likelihood.

Mr. Stanek stated 80% of their business are Friday nights, Saturdays and Sundays. They do not run a lot during weekdays. They are open to change and to re-route if the Chief finds there are issues.

Mr. Ferrara moved to authorize with an emergency clause.

Mr. Wilke interrupted that essentially Council has to authorize one of the 3 options – one of which is to take no action.

Clerk Grimm added since this falls under the Ohio Revised Code, taking no action allows them to already operate.

Mr. Ferrara re-stated that he would just like to say he supports this then.

Ms. Jones clarified there were 3 options given, she advised Council to ask the administration to put together a permitting process, which would allow us to look at the drivers and their records, have them sign an indemnity clause, get insurance and other legal things such as those. Possibly in the months coming, we should consider adding a section to our Code so there may be a revocation process on their permit if something were misrepresented or falsified. They can do what they want right now, so let's put the permitting process in place administratively.

Mr. DeLeone clarified this would be "Option 2 then".

Ms. Jones agreed.

Ms. Wallach asked if they had licenses in Cleveland they had to abide by. The rest of her comment/question and the reply by Ms. Stanek is inaudible for transcription because the microphone was not utilized.

Mr. Stanek added that "inspectors" of the bikes in Cleveland come and they have no idea what they are looking at. They run under Cleveland's horse and carriage ordinance.

Ms. Shaffer asked if Kent will be getting an exclusive deal.

Mr. Stanek laughed and stated how their original thought was to go to Akron, but other than the hills not being ideal, and they have been so welcomed here in Kent, plus they are partnering with MadCap Brewery they are happy they chose Kent.

Mr. Ferrara asked for confirmation that the permitting process is not going to hinder them from starting up.

Mr. Stanek is fine with it and appreciative.

MOTION TO AUTHORIZE ADMINISTRATIVE ACTION FOR A PERMITTING PROCESS FOR QUADRICYCLE TOURS WITHIN THE CITY WITH AN EMERGENCY CLAUSE made by Mr. Ferrara, seconded by Ms. Shaffer, and CARRIED by a voice vote of 7-0.

Hearing no further business before this Committee, Chairman Amrhein adjourned the meeting at 8:52 p.m.

Tara Grimm, MMC
Clerk of Council

ACTION RECOMMENDED:

- 1) **AUTHORIZE THE PROPOSED RECOMMENDATION FROM THE HEALTH BOARD TO ENACT CHAPTER 527 ON THE CODIFIED ORDINANCES CHANGING THE PURCHASING AGE FOR TOBACCO AND TOBACCO PRODUCTS FROM AGE 18 TO AGE 21 WITH AN EMERGENCY CLAUSE**
- 2) **AUTHORIZE ADMINISTRATIVE ACTION FOR A PERMITTING PROCESS FOR QUADRICYCLE TOURS WITHIN THE CITY WITH AN EMERGENCY CLAUSE.**

Topic	Existing Provisions (Senate Bill 331)	Sub. House Bill 478														
APPLICATION PROCESSING TIMELINE AND TOLLING																
Application Fee	Fee cannot exceed \$250 <u>or</u> the fee charged for a building permit for other types of development, whichever is less. §4939.0319	A municipality may charge up to \$250 to process an application, at its discretion, and may adjust the fee up to 10% every 5 years. §4939.0316.														
Application Processing Time	Municipality must grant or deny an application for collocation or for a new pole within 90 days of receipt of a complete application, unless the time is tolled or extended pursuant to another provision. §4939.031	Collocation is unchanged, but the initial time to review and decide upon a new pole would increase to 120 days. §4939.031(B)														
Consolidated Applications	No limit on the number of consolidated requests. §4939.0313 (A)	Requests for new poles and applications to place antennas on existing poles cannot be filed together (intermingled) but may be filed simultaneously. An operator may file an application for up to 30 antennas or up to 30 poles/support structure together as long as the antenna or new poles are substantially similar. §4939.0312														
Tolling	Beyond the initial 90 days, an extension for up to an additional 90 days is permitted for an “extraordinary number” of pending requests for consent. §4939.035 (A)(3)	From the initial 90 or 120 day timetables, an extension of 21 days would be available to the municipality as provided below. §4939.036(A)(3)(a). Further, even if an application is consolidated, each facility or support structure in the consolidated application is counted toward tolling. §4939.0312(C)														
		<table><tr><th>Population</th><th>Number of Requests</th></tr><tr><td>30,000 or less</td><td>15 requests</td></tr><tr><td>30,001-40,000</td><td>20</td></tr><tr><td>40,001-50,000</td><td>25</td></tr><tr><td>50,001-60,000</td><td>30</td></tr><tr><td>60,001-100,000</td><td>60</td></tr><tr><td>Over 100,000</td><td>90</td></tr></table>	Population	Number of Requests	30,000 or less	15 requests	30,001-40,000	20	40,001-50,000	25	50,001-60,000	30	60,001-100,000	60	Over 100,000	90
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30,000 or less	15 requests															
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60,001-100,000	60															
Over 100,000	90															
Comment: The tolling provisions have been revised from up to 90 days for an “extraordinary” number (undefined) to an initial period of 21 days when a specific number of requests have been submitted, subject to further tolling.																

Additional Tolling	No similar existing provision.	For every 15 applications above the threshold for municipalities with populations of 100,000 or less, and every 30 applications above the threshold for municipalities over 100,000, an additional 15 days may be taken, up to a maximum of 90 days beyond the initial 90 or 120 days. §4939.036(A)(3)(b).
Tolling for Incompleteness	Upon providing written notice of the deficiency in the application within 30 days of receipt, a municipality may toll until the necessary information is provided to complete the application. If a supplemental submission is inadequate, the municipality has 10 days to provide notice of the deficiency. §4939.035. This is consistent with federal law (Spectrum Act).	No change. §4939.036(A)(2).
Eligible Facilities Requests (Federal Law)	Pursuant to the Spectrum Act, municipality has 60 days to approve and may not deny an insubstantial modification. §4939.039	No change. §4939.038.
ATTACHMENT TO MUNICIPAL SUPPORT STRUCTURES		
Provider Entitled to Attach to Municipal Support Structure	Municipality must permit attachment to a wireless support structure owned or operated by the municipal corporation and located in the public way. §4939.0325	The right to attach to municipal support structures (owned by a municipality) is conditioned upon operator compliance with design guidelines. §4939.0322. This provision continues to permit mandatory attachment of small cell facilities to municipal support structure. The legislation also imposes requirements that structures and small cells be constructed in a manner that does not impede public safety, travel, or municipal and other public utility use of the public way. §4939.031(A).
	<i>Comment: Sub. H.B. 478 continues to provide a “right” to place small cell facilities on municipal support structures in the public ROW. The new language requires that an operator comply with municipal design guidelines and provides that the operator may be required, at its cost, to replace or modify/harden/fortify a municipal pole if necessary to support the new facilities.</i>	

Annual Fee (attachment to municipal pole)	A municipality may charge up to \$200 per year or the actual, direct, and reasonable costs related to the use of the municipal support structure, whichever is less. §4939.0325	A municipality may charge up to \$200 per year, at its discretion, for attachment to municipal poles, with no necessity for “proving” municipal costs. The municipality may adjust the fee up to 10% every 5 years. §4939.0322(B)
	<i>Comment: The capped fee is now discretionary, with no burden of proof on the municipality, and it can be adjusted for inflation.</i>	
MUNICIPAL AUTHORITY REGARDING SMALL CELL FACILITIES		
Design Guidelines	No similar existing provision.	Municipality may adopt reasonable written design guidelines based on objective criteria regarding: (1) the location of ground-mounted small cell facilities; (2) the location of a small cell facility on a wireless support structure; (3) the appearance and concealment of the small cell facilities, including those relating to materials used for arranging, screening, or landscaping; and (4) the design and appearance of a wireless support structure including height requirements. §4939.0314(C)
	<i>Comment: Municipalities must have design guidelines in place in order to apply them to an application. H.B. 478 will take effect 90 days after it is signed by the Governor.</i>	
Height Limitations	Increased height cannot be more than an additional ten feet or the overall resulting height cannot be more than fifty feet. 4939.01(N)(b)(2)	New poles can be up to 40 feet above ground level. <i>Page 25, lines 693-696.</i> A collocation of an antenna on an existing pole is permitted to increase the height of the pole by up to 5 feet. Using design guidelines, a municipality may cap the height as low as 35 feet in areas that have shorter poles and are subject to building height restrictions. §4939.0314(F). <i>However, an operator may exceed the size limits unless the municipality has regulations preventing the operator from doing so.</i> §4939.0329.
Protections for Designated Undergrounding Areas	No similar existing provision.	Municipality may require a wireless operator to comply with undergrounding requirements, subject to certain conditions, and the municipality must permit the operator to seek a waiver if the operator is unable to service the area due to undergrounding requirements. §4939.0313(G)

	<i>Comment: The undergrounding protections are only applicable if certain conditions are met, such as a requirement that all structures and facilities requires to be buried, including those owned by a municipal electric company. See §4939.0313(G) for detailed requirements.</i>	
Protections for Historic Districts	No similar existing provision.	Any new pole or attachment to be placed in areas designated by federal or state law as historic districts can be subject to specific design requirements. §4939.0314(H)
	<i>Comment: Municipalities should ensure that historic districts are registered as such under federal or state law.</i>	
Relocation Request by Municipalities	No similar existing provision.	Operator will relocate or adjust its facilities, at no cost to the municipality, if the municipality requests the relocation for purposes of completing construction and maintenance activities. §4939.08
Spacing Requirements for New Poles	Municipalities shall not impose any separation requirements. § 4939.0315 (P)	Municipality may impose reasonable and nondiscriminatory spacing requirements for new poles. §4939.0314(I)
Proposed Alternative Locations	Municipality may propose an alternate location within fifty feet of the proposed location. §4939.0315(D)	A municipality may require the operator to utilize an alternate location for a new pole/wireless support structure within 100 feet of the proposed location, or the width of the public ROW, provided no technical problems or additional costs. §4939.0314(D)
Abandoned Poles or Equipment	Municipality may adopt reasonable rules intended to ensure the public health, safety, and welfare with respect to the removal of an abandoned wireless support structure or abandoned wireless facilities. §4939.0315 (E)	Municipalities may require an operator to remove a small cell facility or support structure that has been unused for a year and may impose financial obligations on the operator to ensure their removal. §4939.0314(J) and §4939.0313(D)
Permits for Collocation	Municipality shall not limit the duration of any permit that is granted, except the municipality may require that construction commence within two years. §4939.0315 (L)	An approved municipal permit to collocate a small cell to a wireless support structure must be valid for at least ten years, with presumed renewal for additional five-year terms. §4939.0317. A municipality may void a permit if the collocation does not occur within 180 days of issuance, although the operator may get up to 365 days to complete the collocation under certain circumstances. §4939.0314(E)

Work Permits	Municipality may require a work permit for routine maintenance and unsubstantial modifications to the pole or small cell. §4939.0311(B)	A municipality may require an operator obtain a work permit for any construction on the public right-of-way, including for routine maintenance, activities related to strand-mounted micro wireless facilities, and unsubstantial modifications to the pole or small cell. §4939.0311(B). A municipality may charge a fee for the work permit. §4939.0311(C).
Reserved Space	No similar existing provision.	A municipality may put a plan in place to reserve space in the right of way and on municipal structures for future safety or transportation uses. If a structure needs to be replaced to accommodate both a planned future use and collocation, the operator must pay for the replacement. §4939.0314(A).
Environmental Protections	A municipality may impose requirements that do not exceed federal law. §4939.0315(N)	A municipality may impose requirements that do not exceed <u>state</u> or federal law. §4939.0313(J).
RESTRICTIONS ON MUNICIPAL AUTHORITY TO REGULATE SMALL CELL FACILITIES		
Information about business decisions, demand, capacity, propagation maps, etc.	Municipality shall not require information related to business decisions, the operator's service, customer demand, quality of service to or from a particular area or site, need for additional wireless coverage, capacity, increased speeds, and may not require operator to submit strategy documents, propagation maps, or telecommunications traffic studies. §4939.0315 (A)(B)(C)	May request the information, but not as a condition of approval of the request. §4939.0313(A)(B)(C).
Removal of existing structures or small cells	Municipality shall not require removal of small cell facilities or support structures as a condition of approval. §4939.0315 (E)	Municipality may require removal as a condition of the approval of the request when the facility to be removed has been unused or abandoned. §4939.0313(D).
Air Space Regulations	Municipality cannot impose restrictions on navigable airspace that are stricter or in conflict with federal regulations. §4939.0315 (F)	No change. §4939.0313(E).
Unreasonable Discrimination Among Providers	Municipality shall not unreasonably discriminate among providers of functionally equivalent services. §4939.0315 (H)	No change. §4939.0313(F).

Lease Agreements	Municipality shall not require that the operator purchase, lease, or use facilities, networks, or services owned or operated by the municipal corporation. §4939.0315 (J)	No change. §4939.0313(G).
Requiring Operators to Collocate Together	Municipality shall not condition the grant of consent on the requestor's agreement to permit other wireless facilities to be placed at, attached to, or located on the associated wireless support structure. §4939.0315(K)	No change. §4939.0313(H).
Unique setback and fall-zone	Municipality cannot impose setback or fall-zone requirements different from requirements imposed on other types of structures. §4939.0315(M)	Fall-zone and set back requirements may not be different from other <u>similar</u> types of structures. §4939.0313(I).
Radio Frequency Regulations	Municipality cannot impose any regulations pertaining to radio frequency emissions or exposure to such emissions that are contrary to or exceed rules of the federal communications commission. §4939.0315 (O)	No change. §4939.0313(K).
Moratorium Prohibited	A municipality may not impose a moratorium on the filing, acceptance, consideration, or approval of requests. §4939.0317	No change. §4939.0315.

MISCELLANEOUS		
Small Cell Facility Operators	A public utility or cable operator that operates a micro wireless facility. §4939.01(G)	Limits the entities that can avail themselves of most of the provisions of Chapter 4939 to the big carriers -- AT&T, Sprint, Verizon, and T-Mobile, or their designated agents. Cable operators and their designated agents and video service providers and their designated agents are also included. §4939.031. Certain entities, such as Crown Castle, may also apply as long as they can show that they are applying on behalf of an operator. §4939.031(E). Further, entities that are not operators, such as Crown Castle, may apply for consent even if they are not applying on behalf of an operator, but a municipality is not required to grant its consent in that situation. §4939.033.

Structures Exempt From Attachment	Excludes a utility pole or other facility owned or operated by a municipal electric utility. §4939.01(R)	Municipal electric utility poles are not considered wireless support structures, nor are street signs under fifteen feet tall, and equipment used to supply power to public transportation. §4939.01(V).
Indemnification of Municipalities by Operators	No similar existing provision.	A small cell facility operator must indemnify the municipality for any damage arising out of the operator's negligence. §4939.039
Size of Facilities	Antenna is within, or could fit within, an enclosure of not more than six cubic feet in volume. All other associated equipment is cumulatively not more than twenty-eight cubic feet in volume. §4939.01(N)(1)	No change. §4939.01(P)
Strand-Mounted Facilities	No similar existing provision.	A cable company or video service provider does not need to obtain consent from a municipality or pay small cell fees before it installs, maintains, or replaces "micro wireless facilities" strung between wireless support structures. §4939.0311(C). Micro wireless facilities are no more than 24 inches long, fifteen inches wide, and twelve inches high, and its exterior antenna, if any, must be eleven inches tall or shorter. Micro wireless facilities may only be strung between wireless support structures. §4939.01(H)
"Savings" Clause for Investor-Owned Electric Utilities	No similar existing provision.	Provision stating that Chapter 4939 will not affect or supersede any tariff, contractual obligation or right, or federal or state law currently applicable to investor-owned electric utilities. §4939.0322(E)

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**THE CITY OF KENT, OHIO
STREETS, SIDEWALKS, AND UTILITIES COMMITTEE
WEDNESDAY, JULY 11, 2018**

Vice-Chair Tracy Wallach called the meeting of the Streets, Sidewalks, and Utilities Committee of Kent City Council to order at 7:27 p.m.

PRESENT: Mr. Jack Amrhein; Mr. Michael DeLeone; Mr. Garret Ferrara; Ms. Gwen Rosenberg; Ms. Heidi Shaffer; Mr. Robin Turner; and Ms. Tracy Wallach.

ALSO PRESENT: Mr. Jerry T. Fiala, Mayor and President of Council; Mr. Dave Ruller, City Manager; Ms. Hope Jones, Law Director; Ms. Bridget Susel, Community Development Director; Ms. Melanie Baker, Public Service Director; Mr. David Coffee, Budget and Finance Director; Mr. Tom Wilke, Economic Development Director; Mr. Jim Bowling, City Engineer; Mr. Jeff Neistadt, Health Commissioner; Police Chief Michelle Lee; and Ms. Tara Grimm, MMC, Clerk of Council.

ABSENT: Mr. John Kuhar and Mr. Roger Sidoti

There were three (3) items on the Agenda.

1. Authorize Proposed City Code Updates for Regulations on Small Cell Wireless Antennas

Mr. Ruller stated that since the passage of legislation by Council last year, the State has adopted some additional language to their legislation that allows local municipalities some additional latitudes and controls. We have until July 31, 2018 to update, pass, and conform to the latest standards offered through the State of Ohio. Ms. Jones has been working with an attorney that has been engaging with a lot of other cities. They are both here this evening to briefly discuss what those changes are.

Ms. Jones agreed with Mr. Ruller that an Ordinance we pass has to be passed by July 31, 2018 and effective by August 1, 2018. The draft ordinance before Council is a result of the work that the law firm of Walter Haverfield has done for the City. Mr. William Hannah is here representing the City, is in the municipal law section of Walter Haverfield and is in a particularly good position to help the city draft the optimum small cell ordinance. A lot of cities did not like how the first round of legislature was passed so they entered into a lawsuit together. As a result of that lawsuit, the state legislature, municipalities and law firms like Walter Haverfield all sat down with AT&T and many of the other providers to come up with amendments to the original legislation to give cities a little more leeway. The 1st version of the state ordinance was awful. Chapter 939 is completely new and is the Chapter Mr. Hannah and Walter Haverfield helped us with. As a result we will eventually need to make changes to the existing right-of-way Chapter 937.

Mr. William Hannah of Walter Haverfield stated his firm had begun working with this issue for a couple of years and prior to Senate Bill 331 adopted by the state legislature in December 2016, there was a federal law effort to speed the deployment of small cell wireless antennas in general, including in right-of-ways. In 2012, the federal law established a particular set of criteria that applied to non-substantial modifications, which is new antennas going up on existing poles. As the need increased, they began to speak with state legislatures to streamline and expedite the deployment of the small cell wireless antennas, particularly in a public right-of-way. When we talk about 5G technology with small cell antennas, the "G" stands for generation, so we are talking about the 5th generation of this technology. With 1G through 3G and start of 4G, the problem is geographical coverage. They were on giant phones with small amounts of data being transmitted. Phone are smaller and we text and use more data. Lots of data needs to move very quickly so we can all use the supercomputers we carry around. As a result, the existing infrastructure is insufficient for 5G technology. The large lattice towers with small antennas do not support the speed or capacity required for 5G. 5G moves quickly enough to be able to download a movie in 3.6 seconds and they need to be able to support 1 million connected devices in a square kilometer. The advantage of these small cell antennas are that they are smaller and can move a lot of data very quickly. The limitation of them is that

there is limited range with that robust signal. When Senate Bill 331 came along, about 100 communities filed lawsuits because it was a very difficult law to live with from a municipal level. HB 478 came out of the process of everyone sitting down together which becomes effective on July 31, 2018.

Mr. Hannah then highlighted a few of the improvements that happened with HB 478. **(See Attachment #1)**

Ms. Shaffer asked if these are limited to public and city owned properties.

Mr. Hannah replied "Yes, public right of way is what is encompassed in the statute." Outside of the public right-of-way, it would fall back to zoning regulations.

Ms. Shaffer asked about the guidelines and how soon we need to have those done because if this goes into effect by the end of July, won't we see a rush of small cell installations.

Mr. Hannah agreed, the fear is someone is sitting on a giant basket full of small cell antennas and will dump it upon the application window of August 1st. The anticipated timetable, as he understands it, and after AT&T and Verizon's lawyers communicated, there will continued deployments to densify the existing 4G networks and increase the strength and speed of that coverage. When they are trying to increase to 5G in a community, there will be a much larger increase in applications than we would expect. With that being said, they could come in and start being processed under the new law as of August 1st. The City will be better protected by having Chapter 939 in place prior to August 1st. The document can be examined further and edited as issues arise.

Ms. Shaffer followed up by questioning how without having specific guidelines, they will be restricted in following our existing zoning and have to go before our Architectural Review Board in a historic district.

Mr. Hannah clarified how typically zoning does not reach the public right-of-way and deferred to Mr. Jones.

Ms. Jones added how Mr. Hannah had provided the City with a set of design guidelines so we could begin to set our own guidelines and she has been working with Ms. Susel and Ms. Baker on our design guidelines; Mr. Hannah has also helped us with an application.

Ms. Susel informed Council that when Senate Bill 331 was passed, we had Chapter 937, so we have had applications, but it has not been a mad rush. The primary locations have been in right-of-way up along Kent State where there are already poles. We are setting guidelines that complement the limitations where the zoning code doesn't apply.

There were no comments from the audience or further from Council.

Ms. Jones reminded Council we do have to wait to amend the existing Chapter 937 because the Public Utilities Commission (PUCO) needs a 45 day notice that we are going to change our right-of-way ordinance.

MOTION TO AUTHORIZE THE PROPOSED ADDITION OF SECTION 939 OF THE CITY CODE FOR REGULATIONS ON SMALL CELL WIRELESS ANTENNAS WITH AN EMERGENCY CLAUSE made by Mr. Ferrara, seconded by Ms. Shaffer, and CARRIED by a voice vote of 7-0.

2. Authorize Proposed ODOT Sign Replacement Project Consent Legislation

Mr. Ruller stated ODOT wants to do sign work here in the City. He referred to Mr. Bowling.

Mr. Bowling explained the signs are just for SR 59 and 43 route markers and mile markers.

Mr. DeLeone asked if the signs were going to be any different than the ones that are already there.

Mr. Bowling was informed they are going to be the exact same signs going in about the same places. They are refreshed every 15 years.

Ms. Debbie Redman of 141 S. Mantua St., Kent, stated Mantua is also known as SR 43 South. She is wondering about the signage size because they have a hard time seeing on their street already with all the signage on it. She asked if the signs were going to be any bigger.

Mr. Bowling replied "No."

There were no further questions from Council or the audience.

MOTION TO AUTHORIZE THE PROPOSED ODOT SIGN REPLACEMENT PROJECT CONSENT LEGISLATION WITH AN EMERGENCY CLAUSE made by Mr. DeLeone, seconded by Mr. Amrhein, and CARRIED by a voice vote of 7-0.

3. Consideration of a Request to Waive Driveway Bond

Mr. Ruller began with how some of the different staff that are all here tonight can weigh in on this topic, but there have been a couple discussions and meetings reviewing the request, terms of the request and the ability to waive fees, timing and setting a precedence. He stated Ms. Baker spent the most amount of time after conferring with Ms. Jones and Ms. Susel, but in the end the recommendation is to *not* waive the fee. We are a Compassionate City, but the circumstances in this case do not add up to warrant it.

Ms. Baker gave a chronological history of this situation. In 2016, Community Development's Ms. Jennifer Barone, Development Engineer, had been speaking and working with Mr. Shepherd quite extensively, written letter and explained the process to him. She went above and beyond; then did so again in October 2017. Mr. Shepherd was still not happy and contacted Ms. Baker in late October 2017, early November 2017. She visited the site, had phone conversations and then asked Mr. Shepherd to meet in March 2018. He was unable to meet until April 11, 2018. Ms. Baker went over our City Code, section by section, with Mr. Shepherd, highlighting the areas and reviewing the requirements. Mr. Shepherd was happy with the staff's efforts, but still unhappy with where we were on it. She does not feel we should be waiving the bond. The process is fairly and equitably required by all persons of the City.

Ms. Baker further noted that Mr. Shepherd is not actually the property owner; it is owned by someone else according to the County tax records. The Code is very clear that the property owner is responsible for these types of repairs. She believes Mr. Shepherd is trying to accomplish something good, but he really needs to involve the property owner who the responsibility is actually on. Bonds are there to cover all of the incidentals should the work not be done properly, completed correctly or if we have problems in the future. If the bond were not enough to cover those types of expenses, the City would have to certify them to their taxes. It is for all of these reasons staff is recommending that we do not waive this bond.

Mr. Turner referred to Mr. Ruller's statement about being a compassionate city. He asked how that would apply here, would it be based on income.

Mr. Ruller clarified that he is not suggesting by being a compassionate city that it warrants anything in terms of this instance. He was proudly making a general statement that we are calling ourselves a compassionate city and he didn't mean to confuse anyone.

Ms. Shaffer asked to be refreshed if this is something this property has to do legally. Are we requiring this?

Ms. Bakers replied no, we are not requiring it nor is it mandatory. After his neighbor had their property surveyed, it appears that a portion of Mr. Shepherd's driveway is off-set and on their property. Since then he has had to move his driveway completely onto his own property which slightly off-sets the curb cut and entry into his driveway. This is why he wants to do the curb cut and widen the apron of his driveway. He does still have access to his property.

Mr. DeLeone asked if the neighbors put a fence up along his driveway.

Ms. Baker replied "No."

Mr. DeLeone asked how far it is that the driveway was on the neighbor's property.

Ms. Baker stated that after being out there, it is more like is 5-8 feet. The curb cut that flares to the north is wider than it needs to be, but he still has the ability to enter his driveway. His issue is when he is turning right, or heading south, because if he doesn't turn wide enough, he can clip the corner of the curb.

Mr. Amrhein has been working and talking with Mr. Shepherd and his neighbor wants him off of their property; he asked what is he to do when he doesn't have \$1,000 for the bond? He believes that legally the City is responsible because the apron was put in wrong when the road was constructed.

Ms. Baker has tried to work with Mr. Shepherd and his put him in contact with several contractors that could perform the work at a reasonable price. Many of them are already licensed and registered with the City. The problem is Mr. Shepherd really needs to get the property owner involved. There are avenues that the property owner could utilize to assist him. The property is not in Mr. Shepherd's name.

Mayor Fiala commented that Ms. Baker answered this already. It really isn't the burden of Mr. Shepherd, it is the burden of the land owner, so the \$1,000 should be coming from the property owner.

Mr. Ferrara asked why this is even at Council; We are not the judge, there are rules that have to be followed. Is every exception now going to come to Council?

Mr. Ruller explained Mr. Shepherd came to Council and it was referred to Administration to look into.

Mr. Ferrara apologized as that must have been when he was absent.

Ms. Jones added that if Council was going to allow a waiver, they would have to pass an ordinance doing just that for this property.

Mr. DeLeone asked that if the work is performed correctly, that person receives their bond back and it is not our money.

Ms. Baker replied "That is correct."

Ms. Wallach referred to the audience.

Ms. Barb Tittle of 909 Middlebury Road, Kent asked if this is recommendation only as to this specific case or if it is overall.

Ms. Debbie Redman, 141 S. Mantua St., Kent, questioned if this is an easement issue. She questioned how long he has being using that land as his driveway. The neighbor has allowed him to use that driveway for X number of years, she believes he has the right to continue to use it.

Mr. Ruller commented how these are really good questions for the property owners to talk to their attorneys about.

Mr. Ferrara Motioned to deny the request.

Clerk Grimm stated Council cannot make a Motion in the negative. The Motion would need to be made in the affirmative and vote it down. Making a Motion would be a moot point.

Ms. Shaffer asked if a letter has gone out to the land owner.

Ms. Baker replied "No. Because the land owner has not made a request to the City."

Hearing no further business before this Committee, Chair Sidoti adjourned the meeting at 8:02 p.m.

Tara Grimm, MMC
Clerk of Council

ACTION RECOMMENDED:

- 1) **AUTHORIZE THE PROPOSED ADDITION OF SECTION 939 OF THE CITY CODE FOR REGULATIONS ON SMALL CELL WIRELESS ANTENNAS WITH AN EMERGENCY CLAUSE**
- 2) **AUTHORIZE THE PROPOSED ODOT SIGN REPLACEMENT PROJECT CONSENT LEGISLATION WITH AN EMERGENCY CLAUSE**