



## *City Council*

City Council Chambers ♦ 524 West Stephenson Street ♦ Freeport, IL 61032

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### **MINUTES SPECIAL MEETING Monday, March 10, 2014**

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#### **CALL TO ORDER**

The regular meeting of the Freeport, Illinois, City Council was called to order in council chambers by Mayor James L. Gitz with a quorum being present at 5:45 p.m. on Monday, March 10, 2014.

#### **ROLL CALL**

Present on roll call: Mayor Gitz and council members Tom Klemm, Shawn Boldt, Ronnie Bush, Jennie DeVine, Dennis Endress, Sally Brashaw, and Andrew Crutchfield (7). Alderperson Michael Koester was absent. Corporation Counsel Sarah Griffin was present.

#### **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Alderperson Boldt.

Mayor Gitz asked for leave of council to add a presentation for the promotion of Corporal Dykema immediately following the public comments.

#### **PUBLIC COMMENTS – AGENDA ITEMS**

Kay Ostberg, 1226 Homestead, Freeport Illinois, stated she was very upset to learn that a member of the “Save City Hall” group has not been named to the City Hall Public Outreach Committee. She went on to state her disappointment because the six members of the “Save City Hall” group who have sat through meetings for the last two years have not been named as a member of the Steering Committee for Public Input on the City Hall issue. She stated there needs to be a proponent on the committee. She stated that Chris Fye will be great as a local architect but he has not had access or worked with the public as the others have done. She stated it is this kind of nepotism is favoritism and that is not helpful to the process.

#### **PRESENTATIONS**

Interim Chief of Police Todd Barkalow introduced Aaron Dykema as having received a promotion this morning from Patrolman to Corporal in the Freeport Police Department. Chief Barkalow stated Corporal Dykema has been with the department since 1999 and has been a Field Training Officer (FTO) and Stateline investigator. Discussion was held as to the number of corporals on the force and each shift has one corporal along with the detective bureau so there are five all together.

#### **1st READING OF ORDINANCE #2014-11:**

**AN ORDINANCE AMENDING CHAPTER 658, (NUISANCES), SECTION 658.14 (DISTRIBUTION AND PLACEMENT OF HANDBILLS AND NEWSPAPERS) OF THE CODIFIED ORDINANCES OF THE CITY OF FREEPORT, ILLINOIS**

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Corporation Counsel noted that the version that she placed on council desks is the version that should be reviewed for consideration. The ordinance is printed as follows with the double underlined being the wording that was added and the language superseded shown with a strike through:

**"ORDINANCE NO. 2014-11, AN ORDINANCE AMENDING CHAPTER 658 (NUISANCES), SECTION 658.14 (DISTRIBUTION AND PLACEMENT OF HANDBILLS AND NEWSPAPERS) OF THE CODIFIED ORDINANCES FOR THE CITY OF FREEPORT ADOPTED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, ILLINOIS**

**WHEREAS**, the City Council of the City of Freeport declares that handbills and newspapers which are deposited on property in such a manner as to be exposed to the elements can cause unsightly litter which detracts from the aesthetics of the neighborhood, are a nuisance to the public health, safety and welfare; and

**WHEREAS**, the City Council of the City of Freeport declares that handbills and newspapers which are deposited on property in such a manner as to cause problems with snow removal or damage to snow removal equipment are a nuisance to the public health, safety and welfare; and

**WHEREAS**, the City Council of the City of Freeport declares that handbills and newspapers which are deposited on property in such a manner as to create hazards for pedestrians or inhibit handicap accessibility are a nuisance to the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, ILLINOIS** as follows:

**Section 1.** Section 658.14 entitled "Distribution and Placement of Handbills and Newspapers" of Chapter 658 entitled "NUISANCES" shall be amended as follows:

**"658.14 DISTRIBUTION AND PLACEMENT OF HANDBILLS AND NEWSPAPERS.**

- (a) Distribution in General. Any person may hand, without charge to the receiver, any noncommercial handbill to any person willing to accept it.
- (b) Placement on Vehicles. No person shall throw, affix or deposit any handbill in or upon any vehicle, without the express consent of the owner of such vehicle.
- (c) Placement on Vacant Premises. No person shall throw or deposit any handbill or newspaper in or upon any private premises which are continuously uninhabited or vacant.
- (d) Placement on Posted Property. No person shall throw, deposit or distribute any handbill or unsolicited newspaper upon any private premises, if requested by anyone thereon not to do so or if there is on such premises a sign bearing the words "No Trespassing," "No Peddlers or Agents," "No Advertisement" or any similar notice indicating that the occupants desire not to be molested or have their privacy disturbed.
- (e) Distribution to Inhabited Private Premises. Handbills may be distributed to inhabited private premises which are not posted if the same are so placed or deposited, other than in a mailbox, as to prevent the materials from being carried by the elements.
- (f) Newspapers. No newspaper shall be delivered or placed upon sidewalks or other public property. No newspapers shall be delivered or placed upon inhabited private property unless placed in a designated receptacle or in such a manner so as to prevent the contents thereof from being exposed to the elements. Non-subscribed newspapers shall only be delivered or placed in designated receptacles or the doorstep of such location. Newspapers shall be delivered or placed upon private property so as to prevent the contents thereof from being carried by the elements.

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(g) Size. Any handbill permitted to be distributed by this section, whether commercial or noncommercial, shall not be less than six square inches nor more than forty-eight square inches in size.

(h) Violations. Any non-compliance under this Section 658.14 shall be considered a violation of this Chapter and any individual and any entity in control of distribution of such materials by the individual may be held jointly and severally responsible for any violation(s) hereunder."

**Section 2.** All other provisions of Chapter 658 shall remain as currently set forth.

**Section 3.** This Ordinance shall be effective immediately upon its passage by the City Council, its approval by the Mayor, and its publication as provided by law.

**Section 4.** This Ordinance is expressly adopted pursuant to the Home Rule Powers of the City of Freeport under Section 6 of Article VII of the Illinois Constitution of 1970.

**Section 6.** All ordinances or parts of ordinances in conflict with this Ordinance are repealed insofar as they conflict.

**Section 6.** If any section, clause or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid, and this City Council hereby expressly declares that it would have enacted this Ordinance even with the invalid portion deleted."

Corporation Counsel Griffin read the section that was added and reiterated the violations that any individual and any entity in control of distribution of such materials by the individual may be held jointly and severally responsible for any violations of this ordinance. She stated that the three "whereas" clauses were placed in the ordinance to make legislative findings by the council and then read each one. She stated when you have legislative findings like that in your ordinance people get really picky about first amendment rights so you do not want to infringe on a first amendment as a government entity except in the least restrictive means possible to obtain the objective that you are trying to get to. She has stated what the problems are and what the findings are. Then in the actual ordinance she stated she separated the difference between commercial speech and first amendment since they are protected a little differently so commercial speech or a newspaper that you do not subscribe the ordinance is a little more restrictive now than if it was your own subscription. She explained for the pedestrian hazards for the handicap accessibility you have that non-subscribed shall only be delivered or placed in designated receptacles or the doorstep of such location" and stated that an unsubscribed newspaper would not be considered the Journal Standard but would instead be the advertiser publication or another publication that has recently been delivered throughout the community. She stated we have had reports of these being placed so that they are damaging snow blowers and we have had more than several complaints regarding it this year. Corporation Counsel Griffin explained that the way the ordinance is currently written it already does not allow delivery upon vacant property. She then explained the violation of the chapter and read, "Violations. Any non-compliance under this Section 658.14 shall be considered a violation of this Chapter and any individual and any entity in control of distribution of such materials by the individual may be held jointly and severally responsible for any violation(s) hereunder."

Mayor Gitz stated he has heard from some of the council members that they feel that this is not strong enough. Mayor Gitz spoke about Constitutional law and stated that time, place, and manner cannot be stipulated and we need to pass an ordinance that passes muster in the court, whether it is state or federal.

Mayor Gitz presented that distribution of any publication is already not allowed on vacant property as stated in section "c) Placement on Vacant Premises. No person shall throw or deposit any handbill or

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newspaper in or upon any private premises which are continuously uninhabited or vacant.” Discussion was held as to who will enforce the ordinance and Corporation Counsel Griffin explained that this is the responsibility of the Nuisance Inspector and it can also be done through the Freeport Police Department. Mayor Gitz stated it will be a priority for the Nuisance Inspector.

Mayor Gitz explained the he sent a letter to a publisher of an unsubscribe newspaper in order to bring this matters to their attention in a formal way in an effort to persuade them to talk to their carriers and have their carriers change their technique and if that doesn’t work then we will have to next steps. Discussion was held as to the response of the Journal Standard to the Mayor’s request and the citing of cases which stated that you cannot do a full ban on it. Alderperson Bush asked if the Mayor has sent a letter to the Freeport Advertiser and Mayor Gitz stated he has not sent a letter to that publisher but he will add them to the list. Discussion was held as to what is meant by the wording as to being exposed to the elements.

Discussion was held as the Freeport Advertiser and the need to call the publisher and ask not to have the publication delivered and could there be a way for a person to opt in. Corporation Counsel Griffin stated that under item d) if you ask not to have a publication delivered, then she suggests that you send a letter and keep a certified copy of the receipt for delivery that way if they deliver then you can provide it to the Nuisance Inspector.

Alderperson Brashaw read aloud a response to Mayor Gitz’s letter as written by the Gatehouse Media which stated, “in addition to being a reliable and trusted source of local news, The Journal Standard wants to ensure its continued status as a good citizen in the community. In a spirit of good faith and cooperation with the City of Freeport, the newspaper has therefore specifically instructed its delivery teams not to leave the special events publication at what appear to be uninhabited or vacant premises and, further, to provide delivery at secure locations in all instances. I trust that these measures will satisfactorily respond to the concerns identified in your correspondence as signed by the Senior Vice President and General Counsel, Polly Grunfeld Sack.

Mayor Gitz stated that he did not contact the advertiser at this time.

Alderperson Bush made a motion to approve Ordinance #2014-11 as presented, seconded by Alderperson Boldt. Discussion was held as to whether suspension of rules for passage and whether it would be better to allow additional commenting time. Upon no further discussion the ordinance was laid over to the next regular scheduled meeting.

**RESOLUTION #R-2014-19:**

**RESOLUTION IN SUPPORT OF APPROPRIATE DISTRIBUTION AND PLACEMENT OF HANDBILLS AND NEWSPAPERS IN THE CITY OF FREEPORT, ILLINOIS**

**WHEREAS**, the Mayor and City Council members continue to be contacted by numerous City residents complaining about newspapers, advertisers and flyers/handbills being haphazardly thrown upon their properties as well as vacant properties in their neighborhoods; and

**WHEREAS**, the current practice of these publishers appears to be allowing delivery of their publication by randomly tossing or throwing them from the delivery person’s vehicle; and

**WHEREAS**, these publications are thrown onto vacant as well as inhabited property owners’ lawns, driveways and publically accessible sidewalks; and

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**WHEREAS**, this delivery practice has caused numerous problems with snow removal, creates excessive litter, creates hazards for pedestrians and inhibits handicap accessibility; and

**WHEREAS**, the Mayor previously contacted at least one area publisher requesting their assistance to end this practice but this contact did not result in any real success.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, ILLINOIS**

**Section 1.** The City Council hereby finds and determines that the representations contained in the preamble of this Ordinance to be true and correct, and hereby incorporates them by reference as if fully set forth herein.

**Section 2.** That the Corporate Authorities of the City of Freeport hereby direct and request publishers of newspapers that do not deliver their publications into the appropriate receptacles, on the stoop or between the doors of the inhabited residences, to cease and desist the prohibited delivery activities immediately.

**Section 3.** This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

**Section 4.** The Mayor is hereby authorized to take all appropriate steps to communicate the contents of this resolution to publishers and to enforce the City's ordinances in a just and equitable manner.

**Section 5.** That this Resolution is expressly adopted pursuant to the Home Rule authority of the City of Freeport under Section 6(a) of Article VII of the Illinois Constitution of 1970, and that all Resolutions or motions in conflict with this Resolution are repealed insofar as they conflict.

Aldersperson Klemm moved for approval of the resolution as presented, seconded by Aldersperson Endress. The motion prevailed by a roll call of;

Yeas: Klemm, Boldt, Bush, DeVine, Endress, Brashaw, and Crutchfield (7)

Absent: Koester

Nays: none

Resolution #R-2014-19 was approved.

**APPOINTMENTS**

Mayor Gitz stated in the last council meeting members of the City Hall Public Outreach Committee were approved for his appointments and there was one member left open. He stated that the Public Outreach Committee has a purpose to help staff with the attempt to communicate the pros and cons of the different options and to provide financing options. He hopes to have a listing of questions as reviewed by the council that he wants the committee to answer. If there is a consultant to recommend to the council this committee will be the point of recommendation to council for that selection. He stated this is not about City Hall either anti or for. He stated this council has members that very friendly towards the Save City Hall, notwithstanding the costs estimates and there are people on the council that feel differently but what we have tried to do on this committee is touch a variety of different bases and we worked to select a group of people to carry this out.

Aldersperson Brashaw made a motion to accept an appointment of Pat Garrett Clary to the Steering Committee for the City Hall Public Outreach, seconded by Aldersperson DeVine. Aldersperson Klemm stated he had the opportunity to discuss the appointment with Mayor Gitz and to look at the qualifications of Ms. Clary. Mayor Gitz spoke about the meetings of the committee being posted and he would want it

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to be as transparent and open to the public as possible but based on the composition of this committee it would not need to be posted. Upon no further discussion, the motion prevailed by a roll call of;

Yeas: Klemm, Boldt, Bush, DeVine, Endress, Brashaw, and Crutchfield (7)

Nays: none

**PUBLIC COMMENTS AGENDA OR NON-AGENDA ITEMS**

Steve Carroll, 811 S. Oak spoke about about this past winter enhanced the importance of the ordinance on shoveling sidewalks. He stated that having the Nuisance Inspector focus on school routes was at the expense of our neighborhood. He stated that kids cross street at Homer and Oak. He stated that the enforcement was unequal. He asked that neighborhoods need your attention.

Kay Ostberg, 1226 Homestead, Freeport Illinois, stated grateful that the meeting will be open to the public. She recommended bringing forth the bid process on a consultant. She stated she can't believe that Mayor Gitz did not take advantage of utilizing the people in this room for the committee.

Deb Elzinga, 1147 W. Lincoln Blvd, Freeport Illinois, spoke about the work already done by the "Save City Hall" group. They have a floor plan and information from the Landmarks Illinois and lots of other information which may be useful. She stated they continue care about issue and bring a wealth of information. She stated her disappointment that the Save City Hall group members were not regarded or asked to be a part of the steering committee. She asked that they at least be asked to help the group gather information.

Upon motion duly made and seconded, the meeting was adjourned at 6:25 p.m.

s/ Meg Zuravel

Meg Zuravel, City Clerk