

**THE CITY OF KENT, OHIO
STREETS, SIDEWALKS, AND UTILITIES COMMITTEE
WED., FEB. 4, 2009**

This meeting of the Streets, Sidewalks, and Utilities Committee of Kent City Council was called to order at 8:40 p.m. on Wed., Feb. 4, 2009, by Michael DeLeone, Chair.

PRESENT: MR. AMRHEIN, MR. DELEONE, MR. FERRARA, MR. HAWKSLEY, MS. SHAFFER, MR. TURNER, MS. WALLACH, AND MR. WILSON

ALSO PRESENT: D. RULLER, CITY MANAGER; J. SILVER, LAW DIRECTOR; L. COPLEY, CLERK OF COUNCIL, J. BOWLING, CITY ENGINEER; AND GENE ROBERTS, SERVICE DIRECTOR.

ABSENT: J. KUCHAR, COUNCIL AND J. FENDER, MAYOR

Chair DeLeone said the first item was the agreement with Portage County for the Fairchild Avenue Bridge. **Dave Ruller, City Manager**, said it is time to amend the agreement with the County, and introduced **Jim Bowling, City Engineer**, at this time.

Mr. Bowling said in 1997, they entered into a letter of intent with the County for the purpose of working on the Fairchild Avenue bridge project. He said it was for the preliminary planning only. Mr. Bowling said they need to extend that agreement through construction, and set cost parameters for payment by the City and the County. He said in March, they will have ODOT's agreement to finish the contract, and will need approval of that agreement at that time.

At this time, there were no questions, nor audience comment.

MOTION TO AUTHORIZE THE AGREEMENT WITH PORTAGE COUNTY FOR THE FAIRCHILD AVENUE BRIDGE.

Motion made by Mr. Ferrara, seconded by Mr. Wilson, and carried by a voice vote of 7-0-1, with Mr. DeLeone abstaining.

Chair DeLeone said the last item on their agenda dealt with penalties for snow and ice removal ordinances.

Mr. Ruller said that thanks to "Old Man Winter", the snow is the gift that keeps on giving. He said too much of a good thing is not good. Mr. Ruller said the staff and Council have discussed the issue of sidewalk snow removal periodically, and it has been a matter of interest in the last few weeks. He said they have a small volunteer committee working, and they tend to look at this almost every year. He said that **Jim Silver, Law Director**, can briefly explain the current policy and discuss what the Code says, specifically about the issue of enforcement.

Ms. Wallach said she knew they cited a case where the property owner was taken to court for not clearing their sidewalks. She asked how many of those who cleared the sidewalks were taken to court because someone was insured, and Mr. Silver said he did not know. He said for liability to exist, it has to be fairly blatant in a civil law suit. He said in a civil law suit, if they do the best they can, and there is still ice, and someone cannot see the ice, they may have a claim. He said if they see it and walk on it, they assume the liability. He said if someone is silly enough to spray the sidewalk with water, and it freezes, they might be responsible. Mr. Silver said there are fairly limited circumstances where the person is liable.

Ms. Wallach asked if most are settled in favor of the property owners, and Mr. Silver said it depends on the facts. He said he just had a discussion with a neighbor whose down spouts are directing water to the sidewalks, and it is freezing. He said that is creating the situation, and may be an issue. Mr. Silver said every case is judged fact by fact.

Ms. Shaffer asked if it is a liability issue when snow and ice piles are placed on the sidewalk, and someone falls, trying to get over it, and Mr. Silver said he had one more answer to Ms. Wallach's question. He said he shovels his sidewalks, and he is an attorney.

Mr. Silver said that some laws are more enforceable. He said if one creates situations of unnatural accumulations of snow and ice, they have an ordinance on the books. He said if someone blocks the sidewalks, and are seen doing it, it is a minor misdemeanor. Mr. Silver said if the snow just falls, that is life in Northeastern Ohio. He said if someone puts it in the way, they could be cited. Mr. Silver said the City's plow drivers are the worst offenders, and he was unsure they want to write them tickets. He said it is a policy decision they can make. He said to date; they have not enforced the ordinance against them, as clearing the street is a higher priority.

Ms. Shaffer asked if the issue of failure to clear a natural accumulation of snow is a civil issue, and Mr. Silver said they have an ordinance that the Service Director can have people clear their sidewalks from a natural accumulation. He said they have not done that. Mr. Silver said Bowling Green has tried to do that.

Mr. DeLeone asked about that procedure, and Mr. Silver said they do it on a complaint-driven basis. He said the complaints go the Service Director about the uncleaned sidewalks, and the Service Director would have to send someone out to take a picture sticking in a ruler to measure the depth. He said they need to notify the owner, and the statute says they have twelve hours to clean it. He said someone would have to hand them the citation or tape it on the door, allowing time to clean it. He said if it is not cleaned, the Service Director hires someone, and the property owner is billed. He said they also need a picture after twelve hours. Mr. Silver said they could certify it to the taxes, if unpaid.

Mr. Silver said the problem is that it is not a uniform enforcement. He said it could be a personal issue between neighbors. Mr. Silver said he is unsure it would pass in the Supreme Court, adding they have said they will not make people clear their sidewalks.

Mr. Turner said based on what he has heard and what he has read, there are a lot of mechanisms that are fairly impractical and impotent. Mr. Silver said the word has filtered back that he is negative on this subject. He said the reason is they have had discussions as far back as 1978, and there is no easy, practical remedy that he is smart enough to figure out. He said there are expensive remedies, but there is no quick fix out there.

Mr. Turner said he is trying to get a solution as to what they can do for enforcement. He asked what they could do to get people to do something regarding snow on the sidewalks. Mr. Silver said Mr. Roberts suggested licensing snowplow people in Kent. He said they have to tell them what businesses and residences they are plowing. He said it would be costly to reinstate the license, and if they do it again, it is a higher fee or no license. Mr. Silver suggested a taxing district for areas they determine the City wants cleaned. He said another option is a property tax or citywide tax. Mr. Silver said if they find the money, the City can do it now, but some may complain if their sidewalks are not cleaned. He said they could put something on the ballot, but if people do not want to pay fifty cents more for a trash bag, they will not pay \$15 to \$20 more annually to clear the sidewalks.

Mr. Turner said if this is a safety issue, the City becomes the chief entity for responsibility. He said they can define down exactly the priorities to be set and the areas most traveled. He said they need to get beyond the issue of who shovels and who did not shovel. Mr. Turner asked if it would be reasonable to assume that responsibility, and Mr. Silver said they could set any definitions and/or parameters. Mr. Turner said he is trying to set a standard that makes the most amount of sense, and falls into legal parameters. Mr. Silver said if they want a ten-foot stretch on the West Main Street sidewalks, it will be done, but they will get calls from E. Main Street. He said they would have one sidewalk shoveled, with the one next door unshoveled.

Mr. Turner said he understands there would be people having issues. Mr. Silver said it is not a legal issue, but is a political issue. Mr. Ruller said it is a level of service issue, and it has been discussed a lot in the last few weeks. He said previous Councils have adopted what is in place currently. He said if they want

to change anything, they can do so, adding it is a resourcing issue. Mr. Ruller said whether it is a people issue or case issue, it comes down to where it will come from. He said he had the same thinking about setting priorities, but told Mr. Turner that some of his colleagues pointed out there are legitimate priorities all over town. He said the concept sounds good, but setting those priorities are tough. He said it is a lot harder to slice and dice.

Mr. Turner said they become paralyzed and accomplish nothing. He said at the end of the day, setting priorities may seem arbitrary, but they still will accomplish those goals, although they may be limited. He said he hates to harp on this, but the moment someone is hurt, and they have done nothing, they are much more responsible. Mr. Turner said they need to address the problem to some degree. He said they could define the heavily traveled areas and the areas with schools, but need to identify and address the areas. He said there are many limits, and they do not want to be paralyzed, but are unable to do something because they cannot do everything.

Mr. DeLeone reminded them at this time that the item on the agenda dealt with penalties for snow and ice removal.

Mr. Wilson said they mentioned licensing snow plowers and penalizing them. Mr. Silver said the license would cost more. Mr. Wilson asked about the city snowplows, and Mr. Silver said that is a problem they cannot answer. Mr. Wilson asked how they do one without doing both, and Mr. Silver said he was not comfortable doing that.

Mr. Wilson asked if anyone has an idea of the cost, adding it is not easy keeping it off the curb cuts. He said it would be a large sum of money. Mr. Ruller said they could get them numbers, if Council tells them which intersections to do. Mr. Wilson said if they were going to do that to the snowplows citywide, it would have to be the same thing. He said he was talking about the trucks going around the corner, throwing snow, and blocking curb cuts. Mr. Ruller said they could generate that number. Mr. Wilson said it is not going to be cost effective, Mr. Ruller said they would need city crews or a contractor doing it as they plow, before it solidifies. He said they need a mobilized force, working in conjunction with the plow operations. He said Kent is slim and trim, adding they need to find a body and/or a contractor in Kent.

Mr. Roberts said they could try to keep snow out of the crosswalk, but it would take two trucks to do the cross cutting. He said the downside is that the snow is distributed down the road in someone else's driveway. He said they are going to try and come up with costs. Mr. Roberts said the current process is not working, adding they got at least twenty-five calls earlier. He said there has to be an answer, but it is not going to be cost effective. He said the way to do it is when they are clearing the road, but they have staffing issues. He said in the last snow event, they had a water line break, creating problems for the next shift.

Mr. Hawksley agreed with Mr. Wilson on the dual approach. He said the City causes most of the problems. He said that before they ask the private operators to take care of it, they need to address it. He said he would like the Service Director and the Law Director to draft an ordinance licensing snow plow drivers, and asked if they could come up with something in the short term. Mr. Silver said he can come up with an ordinance the next day, but is unsure how they will respond to a judge why one loses a license when the City employee does equal damage. Mr. Hawksley said the six to eight feet piles of snow are from plows, adding they need a good faith effort. He said in front of the realtor's office on East Main Street, people have to go six feet high to get through.

Mr. Ferrara said if an individual hires a snowplow, that individual is still responsible for the person they employ. He said if the snowplow guy creates a dam of snow blocking the sidewalk or the driveway, it is the owner's responsibility. Mr. Silver said there might be a way to enforce that civilly, but criminally, the police would have to see it, and it is the person who actually does it.

Mr. Ferrara said it goes back to the issue of individual accountability. He said they cannot legislate that nor put it into an ordinance. He said he walks more now, but at the end of the day, a vast majority still drives. Mr. Ferrara said the problem is for a minority, adding they are allowing 99% of the citizens to drive safely

on the roads. He asked how they address that. Mr. Ferrara said they have a siren for natural disasters, and the school calls people when school is cancelled. He said when there are storm warnings, they can call the citizens, reminding them to do their sidewalks and asking them to help their neighborhoods. He said they do not have \$300,000 to plow all of the sidewalks, and need to put it back on the individual, as it is their responsibility.

Mr. Roberts said not too many years ago, they plowed differently, trying to keep the snow out of the intersections for the pedestrian crosswalks. He said they received complaints from the motoring public that they could not turn safely. He said they are serving 99% at the penalty of 1%.

Ms. Wallach agreed with Mr. Ferrara that it is the responsibility of each person. She said they yell at Council, not at their neighbors. She said they are making it their problem, and want the Council to respond. Mr. Ferrara said it is easy to blame government, and suggested she tell them to yell at their own neighbor. He said it is not Council's job to do their dirty work.

Mr. DeLeone reminded them again the discussion was on the penalty. Mr. Ferrara said the penalty is spending more Council time to talk about it, adding it is purgatory.

Mr. Wilson asked if, under the current ordinance, a plower puts snow on the sidewalk if they can tell the property owner to clear it, and Mr. Silver said Mr. Roberts could do that. Mr. Silver said if it is not shoveled, the City could do it and bill them. Mr. Wilson said that would be a penalty if it were not done. Mr. Roberts said it would only be a penalty if the plower driver does it cheaper.

Mr. Wilson said that during the holidays, they pay 2.5 times more. He said whether they hire someone or whatever the cost is going to be higher. Mr. Silver said that someone in the City still has to go through the process. Mr. Wilson asked who would do it under the current ordinance, and Mr. Silver said it would be the Service Director.

Mr. Hawksley said in Bowling Green, the Service Director or Planning Director, both salaried employees, cite one hundred people with each snow, if they need to. He said private operators clean it up. Mr. Hawksley said that they do not have to do it more than once, because the people do not want to pay the extra cost.

Mr. Hawksley said he felt that everyone in the room agrees with Mr. Ferrara. He said the last thing anyone wants to do is fine anyone. He said in some neighborhoods, people care, while in other neighborhoods, they do everything possible to make it harder. He agreed with Mr. Turner that if one person gets hit, it does not matter if 1% or 99% walk. Mr. Hawksley said they spend more than \$20,000 annually cleaning trash in the downtown area. He said they have to look at every pot of gold. He said they have spent more than \$175,000 moving snow, and are making it impossible for people to walk. He said they need to put it in the budget and need to get serious.

Ms. Wallach said she was going to talk about the penalties. She asked if they could charge for the staff person who is measuring the snow, and Mr. Silver said they could try that.

Ms. Shaffer said she wanted to speak to the minority of people who walk, adding they are children walking to school or their bus stop; to college; or college faculty. She said it is the elderly or the poor, who do not have transportation. Ms. Shaffer said they need to keep that in mind, as they look at possible ways the City can make it easier for these populations. She said they had a representative from the school district at the Sidewalk Snow Removal Committee, who gave them a handout about the children injured from slipping on the snow or ice on the way to school. She said it is a public safety issue. Ms. Shaffer said it is an issue of removing natural accumulations of snow versus the issue of people making the situation worse.

Ms. Shaffer asked Mr. Roberts if there was something they can do now to work at the problem of unnatural accumulations, and he asked if she meant citywide or a specific area. He said it makes a difference how he will respond, and Ms. Shaffer said she was unsure. She said the committee is looking

at high pedestrian and motor areas. Mr. Roberts said if it were limited, his first recommendation would be to continue to pay the overtime, until they need an additional appropriation. He said there is no way to do it citywide, as they do not have enough time nor enough pieces of equipment.

Ms. Shaffer asked about a pilot study to return to Council, giving them an idea of the cost and the possible equipment needed. She said she understood they are experimenting with snow removal at this time. Mr. Roberts said he would ask Council to agree they are going outside of an area they have not gone before. He said they are opening up the door about why they are not doing all of them. He said if they clear SR 59, they should be prepared to answer why the other streets are not done.

Ms. Shaffer asked, until Council gives a directive, if they can refer to this as a pilot program and/or a study, and Mr. Wilson called for a point of order at this time. He said this is a penalty to the City, and asked if that is the purpose of this discussion. Mr. DeLeone acknowledged he did not know, as he had asked that question already a few times.

Ms. Shaffer said everything is interrelated. She said they need to look at their own house. Ms. Shaffer said there are two issues, and those issues are the natural accumulations and making the problem worse. She said they need to know how they can avoid people saying the City is the worst offender.

Mr. Turner said one issue would be either enforcement or resources from the City or a mix. He said they are responsible for the safety of 100% of the citizens, adding they have a responsibility to everyone and that is their focus. He said they should focus on how to keep people safe. He suggested it might be a mix, adding he was unsure if they could accomplish anything this year. Mr. Turner said his hope is that if they do something, they will be able to accomplish some goal. He said they need to look at an area and do something that indicates that they get it and are capable to accomplish something on the issue.

Chair DeLeone called for audience comment at this time.

JEFF LANGSTAFF: Mr. Langstaff said this has been hashed and rehashed over the years. He told Mr. Wilson and Mr. Ferrara that he has walked back and forth for more than thirty years, while working for the City. He said he has been in the community for forty years. He said they are talking about fees, fines, and licenses, adding that Mr. Wilson hit it on the head. The City's snowplow drivers are the worst, and how does the City penalize them. He said he has not walked for more than five weeks. Mr. Langstaff said he has personally called David Dix when the Record Courier was in the building. He said Mr. Dix was unaware that the plow driver was blocking the sidewalk. Mr. Langstaff said he is unsure the burden needs to be with the local plow driver. He said Peter Paino's letter to the editor made some good points, as it is a matter of managing resources. He asked where civility and common sense got lost, with respect to people helping each other out. He said people were out earlier in the week, trying to knock down the glaciers.

Mr. Ferrara said when they look at implementation versus enforcement; there is a better chance of focusing on implementation. He said if the City could set the tone that they want citizens to be responsible, it is a better approach and does not cost as much money.

Mr. Ferrara said he would like the Administration to look at an automated notification system and to look at the high traffic areas. He asked how they get the message to people. He said that is the approach they should take, and if it does not work, they should spend money. He said he wanted the Administration to look at whether it was feasible, adding he did not want them to spend more time. He said they have already spent a lot of time and effort.

MOTION TO AUTHORIZE AN ORDINANCE FOR LICENSING PRIVATE SNOW PLOW DRIVERS.

Motion made by Mr. Hawksley, seconded by Ms. Shaffer.

Mr. Hawksley said they have put little articles in the Tree City Bulletin, adding that everyone in Kent knows the ordinance. He said they have tried to be nice about it, adding that education is important. He said Mr. Roberts has talked about a free license, adding it would be an educational program. He said if someone wants to work in Kent, they would tell them what they want them to do. He said it might alert some of the

people as to what they are doing. He said that 99% of the people do not care about the sidewalks.

Ms. Shaffer asked how they get people to care, adding it is when they start to see other people caring. She said many businesses plow their parking lots, but do not bother with the sidewalks. She said the message sent is, "Why should I bother?" Ms. Shaffer said it becomes the thing to do, adding she sees this as an opportunity to reach out to the private snowplow drivers.

Mr. Wilson said he has to vote against this one also. He said if they do that, and have nothing in place to keep their plows from doing it, they will have enforcement problems and will be called hypocrites. He said they need to take care of it, and suggested they walk to the businesses in their ward and talk to them. He said until they have a procedure, he cannot support putting it on the private plowers.

Mr. Ferrara suggested why they would not impose a fee, adding that fee could go towards plowing the main sidewalk.

MOTION TO AMEND TO CHARGE A REASONABLE FEE.

Motion made by Mr. Ferrara, seconded by Mr. Hawksley.

Ms. Shaffer said she realized there was a motion on the floor, and Mr. DeLeone said they need to speak to the amendment. Ms. Shaffer said she could not support the amendment. She said she liked the fact if they do not abide that there is a fee. She said there cannot be a carrot and a stick for not doing it.

The amendment failed by a voice vote of 4-3.

The original motion carried by a hand count of 5-3, with Mr. Turner, Mr. Wilson, and Ms. Wallach dissenting.

MOTION TO HAVE THE ADMINISTRATION LOOK INTO A VOICE RESPONSE SYSTEM.

Motion made by Mr. Ferrara, seconded by Mr. Hawksley, and carried by a voice vote of 7-0-1, with Mr. DeLeone abstaining.

MOTION TO REQUEST THE ADMINISTRATION TO INVESTIGATE THE POTENTIAL COST FOR CLEANING UP THE MESS THE CITY MAKES ON PRIMARY PEDESTRIAN WAYS IN THE CITY.

Motion made by Mr. Hawksley, seconded by Ms. Shaffer, and carried by a voice vote of 7-0-1, with Mr. DeLeone abstaining.

MOTION TO RECESS INTO EXECUTIVE SESSION FOR UPDATE ON COLLECTIVE BARGAINING NEGOTIATIONS.

Motion made by Mr. Wilson, seconded by Mr. Ferrara.

Roll call was taken on the motion. Voting aye: Mr. DeLeone, Mr. Ferrara, Mr. Hawksley, Ms. Shaffer, Mr. Turner, Ms. Wallach, Mr. Wilson, and Mr. Amrhein. The motion carried by a roll call vote of 8-0.

Chair DeLeone recessed this meeting at 9:40 p.m.

Following Executive Session, Chair DeLeone reconvened this meeting at 10:05 p.m.

MOTION TO APPROVE THE NEGOTIATED COLLECTIVE BARGAINING AGREEMENT WITH THE FRATERNAL ORDER OF POLICE/OHIO LABOR COUNCIL.

Motion made by Mr. Wilson, seconded by Mr. Turner, and carried by a voice vote of 7-0-1, with Ms. Wallach abstaining.

Hearing no further business before this Committee, Chair DeLeone adjourned this meeting at 10:07 p.m.

Linda M. Copley, Clerk of Council

ACTION RECOMMENDED:

- 1) TO AUTHORIZE THE AGREEMENT WITH PORTAGE COUNTY FOR THE FAIRCHILD AVENUE BRIDGE.
- 2) TO AUTHORIZE AN ORDINANCE LICENSING PRIVATE SNOW PLOWERS.
- 3) TO HAVE THE ADMINISTRATION LOOK INTO A VOICE RESPONSE SYSTEM
- 4) TO REQUEST THE ADMINISTRATION TO INVESTIGATE THE POTENTIAL COST FOR CLEANING UP THE MESS THE CITY MAKES ON PRIMARY PEDESTRIAN WAYS IN THE CITY.
- 5) TO AUTHORIZE THE NEGOTIATED COLLECTIVE BARGAINING AGREEMENT WITH THE FRATERNAL ORDER OF POLICE/OHIO LABOR COUNCIL.