



WHEATON CITY COUNCIL PLANNING SESSION MINUTES

MAYOR MICHAEL J. GRESK

COUNCILMAN MICHAEL BARBIER | COUNCILWOMAN SUZANNE FITCH | COUNCILMAN JOHN PRENDIVILLE

COUNCILMAN JOHN RUTLEDGE | COUNCILMAN TODD SCALZO | COUNCILMAN PHILIP SUESS

WHEATON CITY HALL, COUNCIL CHAMBERS, 303 W WESLEY STREET, WHEATON, ILLINOIS 60187

March 11, 2019

1. Call to Order

The Wheaton City Council Planning Session was called to order at 7:00 p.m. by Mayor Gresk. The following were:

Physically Present: Mayor Gresk
Councilman Barbier
Councilwoman Fitch
Councilman Prendiville
Councilman Rutledge
Councilman Scalzo
Councilman Suess

Absent: None

City Staff Present: Michael Dzugan, City Manager
John Duguay, Assistant City Manager
William Murphy, Police Chief
Susan Bishel, Public Relations Coordinator

2. Public Comment

Paula Barrington, Executive Director for the Downtown Wheaton Association, stated the Wheaton Police Department and City Attorney met with downtown business owners to hear their concerns about peddling and solicitation. She thanked the Council for their consideration of changes that will allow the Police Department to enforce laws in a fair way that is considerate of people visiting the downtown and its businesses.

3. Approval of February 25, 2019 Minutes

The City Council approved the February 25, 2019 Planning Session Minutes.

4. Amendments to Chapter 46, Peddlers and Solicitors

City Manager Dzugan stated City staff has been discussing possible amendments to Chapter 46 of the City Code in relation to complaints the City received about unsafe solicitation in roadways and door-to-door solicitors. Because there are many legal considerations, the City Attorney's office has completed significant research on the existing law and ensuring that proposed amendments are legally sound.

City Attorney Knippen stated he worked with the Police Department to make sure any amendments would have the desired effect on issues they are seeing. The City Attorney looked at the concept of content neutrality, as this is important in protecting first amendment rights. City Attorney Knippen cited past court decisions that spell out not only the right to free speech, but also the public's right to decide if they want to listen.

One area identified as problematic is roadway solicitations, as the City has received complaints that solicitors are consistently using certain busy intersections and impeding traffic. To address this, the proposed ordinance would prohibit solicitation at the 10 intersections with the greatest number of accidents and incidents involving pedestrians, as measured by data from the Wheaton Police Department. The Police Department also asked that solicitation be prohibited at intersections with the railroad tracks for safety reasons. City Attorney Knippen stated the ordinance already prohibits the solicitation of commercial goods, and the proposed changes would still allow non-commercial solicitation at the other 1,500 intersections in Wheaton, giving many alternative locations to those wanting to provide non-commercial solicitation.

In response to a Council question, Police Chief Murphy stated that the top 10 intersections with the most crashes or incidents has been consistent for a number of years, but the Police Department will periodically review the data to confirm.

The second area City Attorney Knippen reviewed was door-to-door solicitation. He stated there is some misunderstanding in the community as to what is/is not allowed, and the current ordinance doesn't give a lot of guidance. For instance, the current ordinance states if you have a "no solicitors allowed" placard displayed at your door, people can't solicit, but it doesn't say whether people can drop off materials.

City Attorney Knippen reviewed the difficulty in legally distinguishing between commercial and non-commercial speech, and how the proposed ordinance would provide more clarity. It would define soliciting as face-to-face communication and would allow residents to prohibit speech in a place where they have a reasonable expectation of privacy – in their home or car. Solicitors would be able to drop off literature at a person's home but could not ring the doorbell. If residents wanted to prohibit literature also, they would need to place a "no trespassing" sign on their property.

In response to Council questions about a proposal for solicitors to register, City Attorney Knippen stated all solicitors would be required to register, as the City can't choose which types of speech or speakers would be allowed. He stated only one person from an organization would be required to register. In response to a Council question on the length the registration would be valid, City Attorney Knippen stated that would be up to the Council to decide as a matter of policy.

Police Chief Murphy responded to a question about the proposed registration by stating the Police Department does not anticipate that the process would be burdensome for their staff.

In response to a Council question about whether a solicitor would receive a badge or other identification that they registered, Police Chief Murphy stated a badge could be problematic because people may infer that what a person is soliciting is endorsed by the City, whereas the City is not endorsing any organization or group.

In response to a Council question about the process, City Attorney Knippen stated the City would determine through the registration process whether the applicant has had a felony conviction within 5 years. If so, they will not be able to solicit. He stated the registration process also helps the Police Department if there is a complaint about a solicitor, because the City would have contact information to investigate complaints.

Some Council members expressed the opinion that the registration process could be burdensome and should just apply to commercial solicitation.

To clarify the proposed amendments that require solicitors under the age of 16 to be accompanied by an adult, City Attorney Knippen stated the proposed amendments would require a 1-to-1 ratio of adult to child. He stated the wording could be altered to state that one adult can accompany more than one minor, as long as the adult is in their immediate presence.

City Attorney Knippen answered a Council question by stating there is no way to constitutionally regulate “aggressive” soliciting behavior. He stated City staff could provide clear information at the time of registration outlining what solicitors can/can’t do.

In response to a Council question, City Attorney Knippen stated the City Council could not limit non-commercial soliciting to groups with 5013c status because there are legitimate organizations that do not have 5013c status.

Some Council members expressed concern that the types of people who would be looking to cause harm would not register with the City.

City Attorney Knippen stated that a Council suggestion protecting minors from visiting homes of people who have committed serious crimes should be added to the ordinance.

Several members of the Council suggested that because there is difficulty distinguishing legally between commercial and non-commercial solicitation, the City should require all solicitors to register.

In response to a Council question of whether the City would deny soliciting for just violent felony offenses, Police Chief Murphy stated there are types of felony offenses that can be similarly damaging to victims, so he would not recommend limiting this to violent offenses.

In response to a Council question, City Attorney Knippen stated the City could not legally limit registration to Wheaton residents.

City Manager Dzugan stated staff would take this feedback and bring it back to the Council for further consideration.

5. City Council/City Staff Comments

There were no comments.

6. Adjournment

The meeting was adjourned at 8:22 p.m.

Respectfully submitted,

Susan Bishel