

REGULAR MEETING – MARION COMMON COUNCIL – FEBRUARY 5, 2019 – 7:00 P.M., CITY HALL

The Common Council of the City of Marion, Indiana met in regular session on Tuesday, the 5th day of February, 2019 at the hour of 7:00 pm in the Council Chambers, City Hall.

On the call of the roll the following members were shown to be absent or present as follows:

Present: Henderson, Brunner, Smith, Batchelor, Cain, Homer, Johnson, Luzadder and Miller.

Absent: None.

The minutes of the regular meeting of January 2, 2019 and the regular meeting of January 15, 2019 were presented. On a motion by Councilman Steve Henderson, 2nd by Councilman Brad Luzadder, the minutes of the January 2, 2019 meeting were approved as presented by the following vote. Aye: Henderson, Smith, Batchelor, Cain, Homer, Johnson, Luzadder and Miller. Nay: None. Abstain: Brunner. Motion was then made by Councilman Jim Brunner to approve the minutes of the regular meeting of January 15, 2019 as presented. Motion was seconded by Councilman Don Batchelor and carried by a unanimous vote.

COMMITTEE REPORTS: There were no committee reports given at tonight's meeting.

Councilman Jim Brunner said he should do this, for what Ken Hill meant to this community. Two things, one, he wants to be sure everyone knows that the viewing will be tomorrow at the Armes-Hunt Funeral Home at 38th and the By-Pass in Marion. The funeral itself is at 9:30 am on Thursday. And what Ken Hill did for this community for a half century was absolutely incredible. Alan (Miller) and he, both being in the media, know what it would be like to try to run a newspaper all by yourself and he did it for virtually a half century. So, if he may at this time, could they do a moment of silence for Ken Hill? Council President Alan Miller said, certainly, yeah, he appreciates him doing that. Yeah, a moment of silence for their friend, Ken Hill.

Council President Miller asked to repeat an announcement that he made, would have been three weeks ago, at their last meeting. The Council needs to make an appointment to the Marion Board of Zoning Appeals, a four year appointment, which he would like to do two weeks from tonight. They have no applicants currently for the position. It's open to anyone. It doesn't have to be a Republican or a Democrat as often is the case. So, again, just a public announcement, people interested in serving on the Marion Board of Zoning Appeals, they need to pick up an application at the Clerk's Office which is one floor above them and that would need to be turned in a week from this coming Wednesday. So that's for the Marion Board of Zoning Appeals with the thought that they would make that appointment two weeks from this evening.

At this time, Council President Miller told the Council before they work their way through the Council agenda tonight, a couple of changes. Both items of New Business on the agenda, General Ordinance No. 3-2019 and General Ordinance No. 4-2019, have been pulled from tonight's agenda. He would announce at the same time, a public announcement, that the Marion City Council will meet at 6:00 p.m. Thursday in Executive Session and that Executive Session is related in part to the two ordinances that they are pulling this evening.

Mr. Miller said, he believes the only item they have before them this evening is the long awaited public hearing on the Contractors Ordinance. Again, they apologize, this all started, someone said it seemed they've been waiting forever and they have. They started in January, postponed it one meeting and then had to cancel another because Mr. Foustnight was ailing so he thinks tonight, finally, they are going to have the public hearing.

UNFINISHED BUSINESS

GENERAL ORDINANCE NO. 24-2018 2ND READING AND PUBLIC HEARING – Continued from 1/15/19

The City Clerk read General Ordinance No. 24-2018 by title only. An Ordinance of the Common Council of the City of Marion, Indiana to repeal in its entirety Ordinance 9-2005 codified at Chapter 113 in the Code of Ordinances for the City of Marion, Indiana and to repeal that portion of Ordinance 39-1996 codified at Chapter 150.31 of the Code of

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Ordinances for the City of Marion, Indiana and adopting replacement language therefore in a new Chapter 154, Contractor Registration. Jerry Foustnight, Building Commissioner, told the Council this ordinance is an ordinance that would require contractors to be tested, take a test in order to be registered in the city to do work. As they are aware, the exception to the rule would be plumbers because they already take a test through the state and are certified through the state so they wouldn't be required to take this testing. This testing will be by Prometrics. They have been in contact with Ivy Tech. They were willing to use their facilities and do the testing there for those individuals. Again, they felt that this ordinance would bring us up with some of the other communities throughout the state that already require testing. He thinks that they went over this pretty lengthy within the last two meetings they had. He believes at the last meeting that they answered everyone's questions. He believes that they could move forward on this. Due to a concern by Mr. Smith concerning that one section in the proposed ordinance, they did make some changes to that and he believes each of them has a copy of that change. Basically what they have done is they have eliminated (F) Contractor Registration and moved the four items, (a), (b), (c) and (d), up to the section above that. That's what this amendment that they have before them. And he doesn't know if it's an amendment or a proposal for a change for that since they haven't adopted the ordinance or since it hasn't been adopted but they went ahead and made it as an amendment to the general ordinance. But basically they're here tonight for the 2nd reading and public hearing and then, at the end of that, he'd be more than happy to entertain any questions they might have concerning the changes or anything like that. Council President Alan Miller said it is his intent, before they begin the public hearing, they also have another amendment, so in effect, they have a very short amendment and one that's a bit longer. Let's seek the Council approval on the two amendments before they begin the public hearing. He assumes everybody got a copy of what is actually a one sentence amendment. That was some language, he believes, Mr. Hunt thought needed to be cleaned up. So, does he hear a motion or are there questions about the brief amendment that Mr. Foustnight has proposed, and if not, he would entertain a motion from the Council that they adopt that amendment before they begin the public hearing. So is there a motion? Motion was made by Councilwoman Lynn Johnson to adopt the amendment presented by Mr. Foustnight. Motion was seconded by Councilman Dave Homer and carried by the following vote. Aye: Henderson, Brunner, Smith, Batchelor, Cain, Homer, Johnson, Luzadder and Miller. Nay: None. Miller then said the second amendment came out of a special meeting the Council had a couple weeks ago, driven in large part by Councilman Brad Luzadder so he has warned Brad that he would ask him, first of all, to introduce the amendment and then as briefly as he can, and he thinks he can probably do it fairly brief, summarize the key change from the existing ordinance. Councilman Luzadder said he does want to thank Mr. Stephenson for writing this up for them this evening. His advice and his toolage (?) have been greatly appreciated. The only real major change was they did change some language. Instead of going to the Board of Works, it would go before an independent, three person board and, if they go to the back page, it's easier to see. He wanted it to remain not political and so he decided, under Mr. Stephenson, with a Republican being one, a Democrat being one, keeping it even, and then also offering a member to the Administration. He feels that that's a better thought process than putting it to the Board of Works and Public Safety. With former Administrations, things had been funneled in and he would much rather not have that happen and so all the language leading up to that was just that change, instead of it going before the Board of Public Works that it would be the independent board. Miller said, so basically they would be creating a new government entity? He told Luzadder he guessed the official name that he and Mr. Stephenson agreed on would be the Building Suspension and Revocation Committee. Luzadder said, yes. Miller stated, and as Councilman Luzadder pointed out, it would be a three member board, appointed by? Luzadder said, two members would come from, that we would appoint, as a Council, and then one from the Administration and, to keep in neutral, one Republican and one Democrat. Miller said, so that newly created body would be replacing the responsibility that would have been the Board of Works, in the ordinance as written. Miller asked the Council, questions? He thinks the Council members all understand Brad's thinking behind that. Again, as he did with the first amendment, he thinks they can either vote it up or down so he would entertain a motion to approve the amendment to create the Building Suspension and Revocation Committee. City Attorney Tom Hunt told Mr. Miller he didn't know if it was appropriate to ask for leave to speak but he would like to express the concern of the Administration about this amendment. Two reasons, number one is a practical reason. They already have the Board of Works set up to hear issues such as this and he's not sure there would be anything to be gained by adding another layer of government to this process. But more importantly, he needs to point out again, they heard him

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say this before and they're probably going to get tired of him saying it again but this is an issue that involves separation of powers and that's not just some cute little phrase they learned about in junior high school. It's important, it's how this government works and it means something and if it's to mean something, they have to honor it. There's a statute in Indiana, several actually, that describe the various duties of the Legislative Branch, the Executive Branch and the Judiciary, in addition to the Constitution. Indiana Code 36-4-5-3 says the executive shall enforce the ordinances of the city and the statutes of the state. His fear is if they create a committee that is predominately appointed by the City Council, somebody down the road who gets brought before this committee for violation of the ordinance, for whatever reason, would have a legitimate reason to contest that power in court because the creation by this body of a committee, the majority of which is appointed by this body, would be the exercise of your authority, not the executive and he thinks this statute clearly says the executive has the sole authority to enforce ordinances, not the Legislative Branch. And so he thinks, on behalf of the Administration and he needs to express their concern about this amendment and whether or not, at some future point, it could be declared unconstitutional. Mr. Miller told Hunt his comments are duly noted. Again, he returns to his original question, is there a motion? Councilman Luzadder said he has no problem with pulling that amendment then. If they're that set against that, he has no problem. He would ask that, as the author of it, that he would pull the amendment. Miller replied, okay, thank you, they will honor that request. With that, they then are ready to begin. This is a public hearing. They would ask that, if you wish to speak, you come to the microphone, give your name, your address. If they happen to live outside the City of Marion but their business is in the City of Marion, certainly they're interested in what they have to say. He would ask a couple of rules, that they would limit their comments, each individual, to four minutes and their counselor has sort of been their official timekeeper when they have public hearings. They may watch for Counselor Stephenson to hold his hand up to give them a little warning that their time is about up. He would hope the entire hearing, he would limit it to an hour but he hopes it doesn't take that long. Four minutes per person and he thinks an hour's discussion certainly would provide them with the information that they need to vote on the ordinance. So, they are ready for the public hearing. Who would like to be first? Charles Moon – 703 E. Swayzee Street, Marion – told the Council he held a contractor's license for five years in the City of Marion. He spent 10 years as a union carpenter and he's done carpenter work and different kinds of work for several years. He rebuilt a house that he's living in today, literally rebuilt it, not remodel, and when they came to do the final inspection, there was one little wire that he cut off and he doesn't know why he did and that was the only thing that was stopping him. He had to put another wire on and everything was fine. He really doesn't think that a test is going to tell them that a person is going to have the ability to do the work. In all of his carpentry work, he probably couldn't pass the test that they're going to give the prospective people here. He was a diesel mechanic for about six and a half years, he did all kinds of work on diesel engines and trucks, semis, so forth and he probably couldn't pass one of the tests. And he's given a lot of tests, he has taken a lot of tests. He can tell them that it doesn't always say that the individual can do the work if he passes the test. He thinks there's a lot of issues here that need to be addressed from outside the Council. He kind of wonders if the inspectors are going to have to take these tests and pass them with a good grade. He wonders if that will help them to inspect better. He's been around inspectors and jobs long enough, commercial and residential, and he can tell them that sometimes inspectors don't know what in the world they are doing. They have books they go by, pictures they go by and that's about it. So he thinks, in order for a city to expect a contractor to pass a test, the inspectors ought to have to pass that test and pay for it themselves. Number two, if you are a contractor and you have 20 employees, do all 20 employees have to pass the test also? Really, these things, they're just not coming together in his mind. He'll give them an example of a person who done the work and couldn't pass the test. He thinks all of them know Johnny Cash or knew him when he was living. He wrote songs, he sang songs, recorded songs, albums and so on, made millions of dollars. He did not know how to read music. If you'd have given Johnny Cash a test on music reading, music writing, he couldn't pass it. And if you're going to require him to pass that test before he can write a song or sing a song, Johnny Cash would have never have wrote nor would he have ever recorded a song. So he sees plenty of problems with this issue. If it does go forward, it ought to be studied a lot better. He thinks there's a lot more issues here involved. One of the issues that he's heard said, you have a lot of contractors running around and doing work and they're not licensed or anything. He thinks they need to educate the public and say "listen, if you're going to work on my house, I expect you to know what you're doing". So, knowing what you're doing and passing a test, many times are two different things, Moon said. Byron Carter – 604 Blaine Street, Marion –

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told the Council that Marion is a very, very poor city. We can't afford to hire some of these contractors at their wages. Just think what's going to happen when the Amish come here to work. He means, that's a religious group. Are we going to deny them the right to work here in Marion? He means, they're not all the same groups. He means, there are several different Amish people that come here to work and we can't deny anybody the right to work, Carter said. Don Everett told the Council he's from Fairmount, Indiana. He's been in the electrical business since 1970. When the onset of this hit the papers, he was appalled to see names associated with how this was going down. He reached out to the Council members to try talking to them. Out of all the Council members that he did contact, Jim Brunner and Henry Smith. He told Luzadder, he did not respond to his phone calls, he doesn't understand why. But what he wanted to talk to them tonight about is, being in the business all this time and understanding how this situation works, he is an electrical contractor. He doesn't plumb, he doesn't roof, he doesn't put in foundations and he doesn't build. He has no desire to. That is his trade. They are proficient at what they do and take pride in what they do. What he's seeing is, one thing that has not been brought up, is any grandfather clause to this situation. He feels like if an individual has been in business for years and is proficient in the trade should at least have a grandfather clause. He doesn't know why Mr. Foustnight decided to bring this (inaudible). Marion is a poor city and he's sorry to say that. But he will say this to them, City Council. His insurance, his gasoline he buys, his doctors, his lawyers, all these people are right here in Marion and he does see so much outside (inaudible) coming into our town. Sit on the By-Pass, sit at any major intersection in Marion and watch the vans, Indianapolis, Ft. Wayne, these people coming in. They're facility groups and are coming to our town, taking our work. If this work was in Marion, Indiana people, you know, his vendors that he buys from would be Kirby Risk or Lowe's, whoever, they would all be making more money. But it's going out, it's not coming in and he begs of them, think this thing through real carefully, Everett said. Tony Hendey – 1617 S. Nebraska Street, Marion – told the Council he sat through some committee meetings and did a committee as a Council. Something was brought up in the newspaper, this was on his mind. It was a person that objected, it was a contractor here in town, to the crime and grime analogy. He'll tell them a little story. He talked to his sister, he said, some time ago, that they had had somebody speak and say they didn't believe that we should go through gentrification in the City of Marion. Her answer was interesting, she said you've got to have gentry first. We've lost a lot of the people. Look what happened to the, blank in his mind, the social club out on the north side of town. It was a high priced affair and you had the people that were running factories, that owned businesses and were doing well were able to, country club, that's what he was trying to think of. It gets in there sooner or later. So, with that remark about the crime and grime and the gentrification, the important thing is what are we here for? We're here to keep people safe. All of them, he knows, are doing this because they feel public responsibility and he wouldn't be here either if he didn't think there was something that needed to be said. So do we have balance in that area and then the gentleman that just spoke, he can't remember his name, is he stating something that seems to be stated on the edge by other people and he doesn't know where there's a balance. That's his problem, trying to think through that. Trivial but we shouldn't talk about Marion being such a poor town all the time. We don't want it to be that. We want it to elevate people. That's kind of what you do when you're in a community. And they have times of crisis and recidivism and so forth and that's being addressed more so now than it's been looked at before. Mr. Miller told Mr. Hendey his time was up. Hendey said, thank you. Lois Jones – 3982 N. Lagro Road, Marion – told the Council when she gave her address before, somebody came to her house so she doesn't want that to happen again, but she's here again. They're asking people that (inaudible) are qualified or are not qualified and they're wanting these people to go to school. There's a lot of people that can do things that can't read or write. They ask people like her that hire people, construction people, to say oh, can you do this, can you do this. What she does when she hires people, she asks are they bonded and insured so therefore, what they don't know, when they mess it up, somebody else is going to (inaudible). You can go to school all you want but if you don't have that initiative to do it, you're not going to do it. But she has protection for her when they say they're bonded and licensed, Jones said. Phil Bowers told the Council he lives here in Marion, Indiana on Euclid Avenue and he just wanted to say this ordinance is not a measure of quality or skill. It's a measure of Building Code compliance, which is the law. Indiana adopted the International Building Code and Grant County adopted that from the State of Indiana. It's not about the size of the contractor, it's about following the law. These, it's really a measure of risk. As contractors, you guys are paying us to handle the risk of building your project. He means, you've got to make sure it's up to code. They talked about this for a very long time and he agrees with some of the things some of the folks

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said here tonight and a lot of guys can do great work but you have to follow the codes. Otherwise, you're risking lives of the folks, of your customers. And it is about educating the public. If anything comes out of this, he thinks folks need to ask contractors if they are licensed and they need to make sure they are licensed. In some communities, cities require that they print the contract number and their license number on vehicles or any marketing material. And it's about public safety and risk are kind of the points he wanted to make here. Anybody who can do a good job should be able to follow the codes and understand, take care of their customers. So, that's kind of what he wanted to say. Hopefully they will pass this. He believes it is a forward thinking measure for the city to ensure we've got better quality buildings, Bowers said. Being no other audience members to speak, Council President Miller said he would extend the same rule to the members of the City Council that they did to the people that spoke at the public hearing. Three minutes, if they would like to make final comments. Let him just go around and start with Councilman Batchelor. Anything he wished to say in closing, Miller asked. Councilman Batchelor said he had nothing. Miller said, Councilman Smith? Smith asked Miller, need a motion? Miller said, no, he wanted to make sure all the Council members had a moment to speak if they wanted to. Does he have any comments? Smith said he did not. Miller asked each of the Council members if they had anything and all said they did not. Miller told the Council he will now entertain a motion. Motion was made by Councilman Smith to pass General Ordinance No. 24-2018 to 3rd reading. Motion was seconded by Councilwoman Deb Cain and failed by the following vote. Aye: Cain, Homer and Miller. Nay: Henderson, Brunner, Smith, Batchelor, Johnson and Luzadder. Miller asked, did the ordinance fail 5-4? City Clerk Kathleen Kiley said, 6-3.

NEW BUSINESS

GENERAL ORDINANCE NO. 3-2019 1ST READING

An Ordinance amending General Ordinance No. 19-2018 fixing the maximum salaries for police officers of the City of Marion, Indiana for the year 2019. (NOTE: This item of business was pulled from tonight's agenda – see above, above Unfinished Business.)

GENERAL ORDINANCE NO. 4-2019 1ST READING

An Ordinance amending General Ordinance No. 20-2018 fixing the maximum salaries for firefighters of the City of Marion, Indiana for the year 2019. (NOTE: This item of business was pulled from tonight's agenda – see above, above Unfinished Business.)

Being no further business to come before the Council, on a motion by Smith, 2nd by Homer, the meeting adjourned. Time being 7:35 p.m.