

February 13, 2007

Agenda Amended. Amending Smokefree Air Act of 2006 adopted; Creation New Line Items for DA adopted; E911 S.A. for Capital Expenditures Funded by Act 78 adopted; Creation of New Line Items for Supervision Fees adopted; Gen. Fund S.A. Reduced Transfer EMA Fund adopted; PH Line Item for Public Health Preparedness adopted; PH S.A. Additional Public Health Preparedness Grant adopted; Gen. Fund S.A. Mental Health Grant in Juv. Prob. Adopted; Grant to Microfilm Criminal Docket Books adopted; Gen. Fund S.A. Reclass Juv. Prob. Ofcr. To Adm. Asst. adopted; Gen. Fund S.A. Merit Increase for ADA adopted; Removing Reference to PARC adopted; New Line Item for Part Time Pension Eligible Dom. Rel. Fund adopted; LERTA Ordinance adopted; Elected Officials' Salary adopted; Amending Smokefree Air Act Effective Date adopted. Wvr. Purch. Code for Maintenance of Assessment Data Base adopted; Urging Gen. Assembly to Review Paper Trail Technology adopted. Approval of Underwriter for Refinancing of 2005 Bond Issue. First Rdg. Amending SmokeFree Air Act nursing homes.

ERIE COUNTY COUNCIL – Regular Meeting

Mr. Leone called to order a Regular Meeting of the Erie County Council at 7:00 p.m. in the Erie County Council Chambers, Erie County Courthouse. Following the Pledge of Allegiance, the County Clerk called the roll:

Members Present: Mr. Leone, Chairman
Mr. Giles, Vice Chairman
Mr. Augustine
Mr. Cleaver
Mr. Foust
Mrs. Loll
Mr. Mitchell

Members Absent: None

Also Present: Douglas R. Smith, County Clerk
Joseph P. Maloney, Council CPA
Thomas Talarico, Council Solicitor
Sean Wiley, Director of Administration
Stephanie Freeman, Director of Finance

Hearing of the Public

Kelly Becker, 10581 Tanner Road, Wattsburg, advised Council that she has been employed with the County of Erie since 2002 and is a probation officer. As a representative of ECAPE bargaining unit, she expressed opposition to the ordinance proposed by Chief Blakely eliminating a juvenile probation officer position, and replaced with clerical office staff. The removal of a professional employee from that position with the replacement of a non-professional is both contrary to the provisions of their bargaining agreement and relevant provisions of Act 195 of the Pennsylvania State Labor Board. ECAPE requests Council not approve this proposal.

Renee Vendetti, Erie, expressed her displeasure at the minutes not being published word for word. Council must follow Robert's Rules of Order. She also questioned Mr. Barber's new position. She asked if Council creates positions whenever they feel. She expressed concerns about Mr. Lucht, Ms. Kwiatowski and Mr. Seus taking over Mr. Barber's position. She wants to make sure that Council follows the rules.

Maria Foster, Peach Street, stated Council never dispersed Case Management and OCY; they were only separated into Care Management because MH/MR was double dipping. Under the by-laws created by Council, there is nothing that creates a position for a COO. The by-laws must be amended; the creation of Care Management was not done properly. She believes the amount of time Christine Jewell spent on her review of OCY cases amounted to 35 minutes per case. Ms. Foster does not believe Ms. Jewell did her job and, therefore, should not be paid. These cases need to be reviewed again.

Kenneth Przepierski, 640 East 12th Street, wished to speak about the possible approval for an underwriter for the refinancing of the County's 2005 bond issue under New Business on the Agenda. He believes that bonds are usually refinanced or cashed in every 5-10 years, and he asked who the underwriter would be. He also questions the merit increases and stated that Ms. Weber's department got a raise in the amount of \$7,000 masked underneath the webmaster ordinance. He also asked for the names of people on the new OCY Advisory Board, when the Board meets and whether they keep minutes.

Kathleen Reitinge, 14444 Lowville Street, Wattsburg Borough, approached Council to thank Carol Loll for the help that she has given to a certain doctor who has developed a backboard combination that can be used to prevent bedsores, and for various other situations. This will be good for the community since it will create jobs. Through the efforts of Mrs. Loll, Mr. Mitchell and Mr. Novotny, this doctor is now able to move forward. Ms. Reitinge also thanked Mr. Mitchell for the citation for Mrs. Yost, who has been the Borough's tax collector.

Hearing of
The Public

Andy Glass, 4103 Liberty Street, Erie, thanked Council for the attention paid over the course of the last several months regarding the smoking ordinance. He offered to provide statistics to Members of Council regarding studies that have been done. Mr. Glass encouraged Council to continue their efforts to implement a no smoking ban in Erie County for the health of the citizens.

Finance
Committee

Mrs. Loll reported the Finance Committee met on February 8, 2007, and agreed to place on the agenda, a second reading of Ordinance Numbers 6, 7, 8, 9, 10, 12, 13, 14, and 15; as well as a first reading of Ordinance Number 20 and the possible adoption of Resolution Numbers 10 and 11. Also on the agenda is the possible of approval of an underwriter for the Refinancing of Erie County's 2005 Bond Issue Series B.

Personnel
Committee

Mr. Cleaver reported the Personnel Committee met on February 8, 2007, and approved Ordinance Numbers 16, 17, 18 and 19 for second readings.

Mr. Giles'
Report

Mr. Giles reported the Elected Officials' Salary Committee met on February 13, 2007 and unanimously recommended Ordinance Number 21 be included on this evening's agenda. This ordinance involves the salaries recommended for those individuals running for certain offices this year, including four members of Council, the Controller, The District Attorney, and the Coroner. There will be an amendment to include this ordinance for a second reading this evening.

Probation &
Parole Mtg.

Catherine McVey, Chairman of the Pennsylvania Board of Probation and Parole, visited Erie along with other members of her staff, including the Director of Offender Re-entry Programs and the western regional director. Mr. Giles noted this is the first time the Chairman of the Pennsylvania Board of Probation and Parole has come to Erie in all of the years he has served on Council. Included in that meeting from Erie County were Mr. Giles, Jeff Shaw, Marlene Smith, Warden Veshecco, Art Amann from the Mercyhurst Civic Institute, Raymond Mason and Rich Foster from Gateway Erie, Rick Seus, the Director of Alcohol and Drug Abuse, Stacy Perez, Director of Gaudenzia, Bill McCarthy, President and CEO of Stairways Behavioral Health, and Laurie Rogan, who is the Chief Investigator with the Public Defender's Office. Mr. Giles provided handouts to Members of Council. These handouts describe the demographics of state probation cases as of September 2006, and provide

a very specific profile including gender, race, age, jurisdiction, length of time under supervision, employment, level of supervision, and details regarding the offense. These individuals involved in the probation/parole program are people who live in our neighborhoods, county and community.

Mr. Giles stated this meeting provided a sense of what is occurring at the state level, and showed that Catherine McVey is willing and committed to working with local officials and providing a balanced approach in looking at re-entry, and issues relative to treatment, including in-patient services for either substance abuse or mental illness. This is a much more aggressive program, and Mr. Giles was very impressed with the Board's willingness to connect with the county system.

NACo

Mr. Giles noted that he currently represents Pennsylvania on the National Association of Counties Board of Directors. NACo was recently given an award for being one of the top national organizations in the country. The study covered over 1,000 various organizations and was spearheaded by Jim Collins. Mr. Collins is a well known author who wrote many bestsellers in the business category, including *Good to Great* and *Built to Last*. "After four years of data analysis several indicators of success were discovered that differentiated the good organizations from the remarkable ones." Mr. Giles pointed out that for NACo to be selected as one of the top organizations, after having been thoroughly analyzed, is certainly a compliment to NACo. He advised that this information was referenced in a recent book titled, *7 Measures of Success: What Remarkable Associations Do That Others Don't*. NACo is an organization that was given serious accolade and praise for being extremely efficient, customer friendly and effective as a National Association of Counties.

Mr. Foust's Report

Mr. Foust submitted a report stating that on February 10, 2007, he attended the Public Safety Dinner.

Mr. Leone's Comments

Mr. Leone wished to respond to some individuals that spoke this evening. He noted that each individual was courteous and thanked them for their courtesy. He addressed Ms. Kelly Becker, and advised her that Council is guided by whatever the Administration indicates and the information provided to them. With respect to her particular issue, the Administration indicated this position could be eliminated because it was needed for something else. In a situation such as this, it is difficult for Council, as part-time legislators, to go to a particular department in an effort to determine whether or not an individual should be in one position or another. A supervisor provides advice to Council with respect to the situation, and how they believe it should be handled, as well as any potential savings.

Mr. Leone addressed Ms. Vendetti's concerns regarding Roberts' Rules of Order with respect to the minutes of Council meetings. According to the Home Rule Charter, it states a journal must be kept of Council meetings. A journal is indicated as a record or transactions kept by a legislative body. Those can be minutes on every sentence or based on whatever this Council indicates it should be. According to the rules of Council, this decision is normally left to the Chairman of Council. Mr. Leone believes, in this particular case, Council does keep a record of these transactions that happen within Erie and Erie County.

Mr. Leone referred to Ms. Foster's remarks regarding Care Management and Mental Health/Mental Retardation double dipping and whether the by-laws are legitimate. Mr. Leone explained that when a position is eliminated from the county, it may still be on the books, but the position no longer exists. Mr. Barber is being placed in a new position effective March 6, 2007, as Chief Operating Officer of Care Management. There is no increase in pay, he is simply moving to a new position. Three individuals are picking up Mr. Barber's responsibilities with no increase in pay.

Mr. Leone is unsure as what Mr. Przepierski is referring to with respect to his comments regarding merit pay increases in the amount of \$7,000. The webmaster position was agreed to last year; funds were appropriated, individuals were interviewed, and that webmaster was appointed by this Administration and approved by this Council. No raises were involved in any

way, shape, or form. With respect to Mr. Przepierski's inquiry regarding the advisory boards, Mr. Leone advised that all the advisory boards do keep minutes which are public, as well as the meetings.

Agenda Amended

Mr. Giles moved to amend the agenda to include Ordinance 21, 2007 for a first reading. Mr. Mitchell seconded, and it carried in a unanimous roll call vote.

Mr. Giles moved to include Ordinance Numbers 19, 20 and 21 for a second reading. Mr. Cleaver seconded.

Mr. Foust stated that he will vote to move these particular ordinances to a second reading because they are routine matters of little to no controversy, and there is wide consensus among the Council Members.

After a request for clarification by Mr. Mitchell on the motion, Mr. Leone called for a vote to move Ordinance Numbers 19, 20 and 21 to a second reading. The motion carried in a roll call vote of 7-0.

Mr. Giles moved to further amend the agenda to include Ordinance Number 22, 2007 for a first reading. Mr. Cleaver seconded, and it carried in a roll call vote of 5-2, Mr. Foust and Mrs. Loll voting no.

Mr. Giles moved to include Ordinance Number 22, 2007 for a second reading, and Mr. Cleaver seconded the motion.

Mr. Foust's
Comments

Mr. Foust stated his belief that Council moving Ordinance Number 22, 2007 to a second reading is unconscionable. If the original smoking ban ordinance had been pushed through in one night without proper diligence and proper review from the public, the opponents of the smoking ban would have been screaming, as well as Members of this Council who opposed the ban. They would have stated that it was unfair, that debated was needed, and it shouldn't be rushed. Mr. Foust declared that to afford those opponents of the smoking ban that opportunity is fair; however, to not afford the supporters of the smoking ban the same consideration is unconscionable, and a mistake for Council to do so. He urged his colleagues to vote against moving this ordinance to a second reading.

Mr. Mitchell's
Comments

Mr. Mitchell expressed his respect for Mr. Foust's opinion; however, he feels that a procedural problem exists. There is a great debate on the legality of this law. Mr. Mitchell has been meeting with officials in Harrisburg, who now look to move on this issue on a statewide basis, most likely in late April or May. There is room right at this point until the State Legislature acts on this law for interpretation in the legal system. He affirmed his support for the smoking ban 100%, but feels it would be wise to listen to the judge's opinion with respect to the judge's request. Right now, to move forward and then have to stop, would be an inconvenience for the citizens of this county. The manner in which Mr. Mitchell casts his vote this evening does not mean that he wants the smoking ban implemented any less, but that many complications exist at this point. He believes the 30 days of grace right now will hopefully solve some of the legal arguments, and Council will be able to move forward.

Mr. Foust replied that Council was aware of the legal concerns when this debate started. If Council was worried about those legal concerns, the vote should have been delayed weeks ago. To not afford the supporters of the smoking ban the same consideration of two readings before this Council on such a controversial issue is unconscionable.

Mr. Leone called for a vote on Mr. Giles' motion to move Ordinance 22, 2007 for a second reading. The motion carried in a roll call of 5-2, Mrs. Loll and Mr. Foust voting no.

Agenda Amended

Mr. Foust noted that Council did not discuss in caucus the recent notification by the State that the nursing home exemption in Section 9 C of the original smoking ordinance is against state law. Mr.

Foust moved to add Ordinance 23, 2007, "Amending Erie County Smokefree Air Act of 2006 to Delete Section 9 C Regarding Nursing Homes," to the agenda for a first reading, Mrs. Loll seconded, and it carried in a unanimous roll call vote.

Amending
Smokefree Air
Act

Mr. Smith gave a second reading of Ordinance Number 6, 2007, "Amending the Erie County Smokefree Air Act of 2006 for 'Specialty Tobacco Establishments.'" Mr. Giles moved to adopt, and Mr. Foust seconded.

Mrs. Loll moved to amend the definition on Exhibit A as follows:

Sec. 3. Definitions

P. "Specialty Tobacco Establishment" is a retail establishment that derives ninety-percent (90%) or more of its gross revenue from the sale of cigars, cigarettes, loose tobacco, pipes or other smoking devices for burning tobacco and related smoking accessories **for on-site consumption** and in which the sale of other products is merely incidental. "Specialty Tobacco Establishment" does not include **a retail tobacco store**, a tobacco department or section of a larger commercial establishment, any establishment with a liquor permit, or any restaurant.

Mr. Giles seconded the motion to amend, and it carried in a roll call vote of 6-1, Mr. Leone voting no.

Mr. Leone called for a vote on the ordinance, as amended, and it carried in a roll call vote of 5-2, Mr. Leone and Mr. Mitchell voting no.

Creation New Line
Items for D.A.

Mr. Smith gave a second reading of Ordinance Number 7, 2007, "2007 General Fund Budget Revised Expenditures and Creation of New Line Items for the District Attorney." Mr. Giles moved to adopt; Mr. Augustine seconded, and it carried in a unanimous roll call vote.

E911 S.A. Capital Exp.
Funded by Act 78

Mr. Smith gave a second reading of Ordinance Number 8, 2007, "Second 2007 E911 Fund Budget Supplemental Appropriation for Capital Expenditures Funded by Act 78." Mr. Giles moved to adopt; Mr. Foust seconded, and it carried in a unanimous roll call vote.

New Line Items for
Supervision Fees

Mr. Smith gave a second reading of Ordinance Number 9, 2007, "2007 General Fund Budget Revised Expenditures and Creation of New Line Items for the Supervision Fees." Mr. Giles moved to adopt; Mrs. Loll seconded.

Mr. Giles moved to amend Ordinance Number 9, 2007 to include the following language:

"BE IT FURTHER ENACTED that upon the purchase of three new vehicles, three existing probation vehicles will be sold or traded, and removed from county service. Any proceeds will be returned to the Supervision Fee Account."

Mr. Mitchell seconded, and the amendment carried in a unanimous roll call vote.

Mr. Leone called for a vote on Ordinance Number 9, 2007, as amended, and it carried in a unanimous roll call vote.

Gen. Fund S.A.
Reduced Transfer
To EMA Fund

Mr. Smith gave a second reading of Ordinance Number 10, 2007, "Second 2007 General Fund Budget Supplemental Appropriation for Reduced Transfer to EMA Fund." Mrs. Loll moved to adopt; Mr. Mitchell seconded, and it carried in a unanimous roll call vote.

New Line Item
PH Preparedness

Mr. Smith gave a second reading of Ordinance Number 12, 2007, "2007 Public Health Fund Budget Revised Expenditures and Creation of a New Line Item for Public Health Preparedness Grant." Mrs. Loll moved to adopt; Mr. Giles seconded, and it carried in a unanimous roll call vote.

Mr. Giles congratulated Mr. Glass, Director of the Department of Health, for being proactive in finding grants to deal with this public health issue and making certain that Erie County is in the forefront.

PH S.A. Public Health
Preparedness Grant

Mr. Smith gave a second reading of Ordinance Number 13, 2007, "Third 2007 Public Health Fund Budget Supplemental Appropriation for Additional Public Health Preparedness Grant." Mr. Mitchell moved to adopt; Mrs. Loll seconded, and it carried in a unanimous roll call vote.

Mental Health
Grant In
Juv. Probation

Mr. Smith gave a second reading of Ordinance Number 14, 2007, "Third 2007 General Fund Budget Supplemental Appropriation for PA Department of Education Mental Health Grant in Juvenile Probation." Mrs. Loll moved to adopt; Mr. Giles seconded, and it carried in a unanimous roll call vote.

Grant to
Microfilm
Clk. of Cts.

Mr. Smith gave a second reading of Ordinance Number 15, 2007, "Fourth 2007 General Fund Budget Supplemental Appropriation for PHMC Grant to Microfilm Criminal Docket Books in Clerk of Courts." Mr. Giles moved to adopt; Mrs. Loll seconded, and it carried in a unanimous roll call vote.

Reclass of
Juv. Prob. Ofcr.

Mr. Smith gave a second reading of Ordinance Number 16, 2007, "Fifth 2007 General Fund Budget Supplemental Appropriation for Reclass of Juvenile Probation Officer to an Administrative Assistant." Mrs. Loll moved to adopt; Mr. Giles seconded.

Mr. Foust stated that he will vote for this ordinance because he is confident that this Council and the County Executive have been very responsible about adding employees where there is a need. Juvenile Probation is certainly an area where there are occasional needs to add employees.

Mr. Leone called for the vote on Ordinance Number 16, 2007, and it carried in a unanimous roll call vote.

Merit Increase
For ADA

Mr. Smith gave a second reading of Ordinance Number 17, 2007, "Sixth 2007 General Fund Budget Supplemental Appropriation for Merit Increase for Assistant District Attorney Position Number 003400-017." Mr. Giles moved to adopt; Mrs. Loll seconded, and it carried in a unanimous roll call vote.

Amendment to
Personnel Code
Removing PARC

Mr. Smith gave a second reading of Ordinance Number 18, 2007, "Amendment to the Erie County Personnel Code Removing all Reference to the Personnel Action Review Committee (PARC)." Mrs. Loll moved to adopt; Mr. Foust seconded, and it carried in a unanimous roll call vote.

At Mr. Giles' request, Mr. Leone provided a summary of the reason for the elimination of the PARC. Mr. Leone advised the audience that the PARC system consisted of employees that determined whether or not other employees would receive merit increases. In the past, this was a responsibility of the executive branch of government without the legislative branch having any input. As changes were made to the Personnel Code, it was decided that in order for the PARC to be responsible, this

committee would have to seek County Council's approval for any merit increases. Eventually, it was determined this committee was no longer necessary. Mr. Leone explained that Council cannot make a change to the Personnel Code; that must come from the Personnel Director, who indicated that this is the manner to proceed. Council agrees, and the change will be made.

Mr. Leone called for a vote on the Ordinance Number 18, 2007, and it carried in a unanimous roll call vote.

Dom. Rel. Line
Item Part-Time
Pension Eligible

Mr. Smith gave a second reading of Ordinance Number 19, 2007, "2007 Domestic Relations Fund Budget Revised Expenditures and Creation of New Line Item for Part Time Pension Eligible." Mr. Giles moved to adopt; Mrs. Loll seconded, and it carried in a unanimous roll call vote.

LERTA

Mr. Leone called for a second reading of Ordinance Number 20, 2007. Mr. Talarico asked to address that issue, and stated that prior to the commencement of the meeting, Mr. Talarico felt there was a belief that Ordinance 20 was a waiver of the original LERTA ordinance with respect to its application to properties in McKean Township. The manner in which Ordinance 20 reads amounts to a complete amendment to the 1980 ordinance such as it would apply to all properties across the board. Mr. Talarico suggested that the ordinance read in such a manner as to simply waive the 1980 LERTA ordinance as it applies to certain properties located in McKean Township. He suggested the title of the proposed ordinance be amended to read as follows:

"Waiver of Section 4 of LERTA Ordinance 59 of 1980 With Respect to Certain Properties Located in McKean Township."

Mr. Talarico also suggested the first paragraph be amended as follows:

BE IT ENACTED by the County Council of the County of Erie, pursuant to Article II, Section 3 B (2)(f) that Section 4(a) 1 "Exemptions Schedules" of Ordinance Number 59 of 1980 is hereby ~~amended~~ **waived** as outlined on the attached Exhibit A.

Mr. Foust asked Mr. Talarico whether language needed to be added to explain how the LERTA will be handled. Mr. Talarico replied that the original ordinance prepared by Mr. Smith accomplishes that, and referenced the two exhibits attached to the ordinance.

Mr. Mitchell seconded the amendment, and it carried in a unanimous roll call vote.

Mr. Leone called for a vote on Ordinance Number 20, 2007, as amended, and it carried in a unanimous roll call vote.

Assessment
Data Base

Mr. Smith gave a reading of Resolution Number 10, 2007, "Waiver of the Purchasing Code to Contract with Tyler Technologies for the Maintenance of the Assessment Data Base." Mr. Mitchell moved to adopt, and Mr. Giles seconded.

Mrs. Loll stated that although she is not in favor of waiving the Purchasing Code, she will vote yes on this ordinance since she has been provided information that this is the only company the county can use for this. Mr. Leone confirmed for the public's information, Tyler Technologies is the only company that sells this equipment. He called for a vote on the resolution, and it carried in a unanimous roll call vote.

Urging Gen. Assembly
Review Paper Trail
Technology

Mr. Smith gave a reading of Resolution Number 11, 2007, "Urging the General Assembly to Review Paper Trail Technology for Electronic Voting Machines." Mr. Foust moved to adopt; Mr. Giles seconded, and it carried in a unanimous roll call vote.

Underwriter for
County's 2005 Bond
Issue Approved

Mr. Giles moved to approve PNC as the underwriter for the refinancing of Erie County's 2005 Bond Issue Series B; Mr. Foust seconded. Mr. Giles asked Mr. Maloney, Council CPA, to provide the rate information. Mr. Maloney replied that the rate is \$2.44 per thousand dollars of bond. This is the best rate per the requested proposals, and the potential savings projected for the County is approximately \$500,000 to \$600,000, depending on the market. Mr. Leone called for a vote on the approval, and it carried in a unanimous roll call vote.

Elected Officials'
Salaries

Mr. Smith gave a second reading of Ordinance Number 21, 2007, "2008-2011 Elected Officials' Salaries Ordinance." Mr. Giles moved to adopt; Mr. Mitchell seconded.

Mr. Foust asked for a separation of the vote on Chairman, County Council, Controller, District Attorney, and Coroner. Mr. Giles suggested one vote for Chairman and County Council, and Mr. Foust agreed.

Mr. Leone called for a vote on the Controller salary, and it carried in a unanimous roll call vote.

Mr. Leone called for a vote on the District Attorney salary, and it carried in a unanimous roll call vote. Mr. Giles wished to clarify that state law dictates that the District Attorney receive a compensation of \$1,000 less than a Common Pleas Judge. The legislation has encouraged counties to have full time district attorneys and has provided a 65% of salary reimbursement, previously non-existent, to counties that follow the state mandate of \$1,000 less than common pleas judges. If Erie County were to provide a salary less than that amount, the potential 65% reimbursement would be jeopardized.

Mr. Leone called for a vote on the Coroner salary, and it carried in a unanimous roll call vote.

Mr. Leone called for a vote on Chairman and County Council salary, and it carried in a vote of 5-2, Mr. Foust and Mr. Leone voting no. Mr. Giles wished to note for the record that County Council has not seen an increase in salary level for ten years.

Amending
Smokefree Air Act

Mr. Smith gave a second reading of Ordinance Number 22, 2007, "Amending the Erie County Smokefree Air Act of 2006 Effective Date to March 15, 2007." Mr. Giles moved to adopt; Mr. Augustine seconded.

Mr. Foust's
Comments

Mr. Foust noted that Council undertook the original smokefree ordinance a couple months ago. Six members chose to ignore the solicitor's legal opinion, despite their respect for his opinion, knowing that there were going to be legal concerns over this ordinance, and went forward with the smokefree ordinance. Approximately one month ago, there was an attempt to have this ban delayed, and five members at that time decided that would not be a wise course of action and continued to move forward. Mr. Foust expressed his belief that if Council votes for this ordinance this evening, Council's credibility, and how Council proceeds with business will be tarnished. Council firmly believed in the importance of the smoking ban to the extent that it was willing to go to court. The first part of this lawsuit was successful, and now Council plans to turn around and give to the plaintiffs the very thing they went to court to defend. Mr. Foust does not believe this is a good precedent.

Mr. Foust also expressed his opposition to moving Ordinance Number 22, 2007 forward to a second reading without providing proper public notice, such as the nonsmoking community.

He spoke of his concern that this will set a precedent that when issues and situations get sticky, and Council is taken to court, provided there is enough public pressure from the judge, the public, the County Executive, bar owner or restaurant owner, this Council will cave despite what they believe is the right thing to do. This was not a legal issue initially. The smoking ban was a public health issue, and in Mr. Foust's opinion, that has not changed, nor does he believe has it changed in any other Council Member's opinion. Council is not operating in that same spirit now, and Mr. Foust believes that is a dangerous precedent for Council. He urged his colleagues to vote against Ordinance Number 22, 2007.

Mr. Giles'
Comments

Mr. Giles remarked that he took exception to Mr. Foust's comments. He agrees with Mr. Foust that this issue started as a public health issue; however, even before it began, it had become a legal issue. The courts have asked for a reasonable amount of time in order to review this and make a final determination regarding the legality. In Mr. Giles' opinion, this shows Council's ability to be both flexible and reasonable. He believes it would be a farce to go forward and not pass this ordinance, for example, to start on February 17th and by early March see everything overturned. This ordinance makes sense because it is at the very beginning of the whole process, not months into it. To allow the courts ample time to review this matter shows both respect to the courts and to Judge Bozza. He does not believe Council is dishonored. It is Mr. Giles' hope that as the Judge indicated in his Memorandum, there would be an expeditious decision rendered. Mr. Giles feels comfortable with this proposed ordinance, and feels Council is being most reasonable to accommodate this request by Judge Bozza.

Mr. Foust's
Comments

Mr. Foust pointed out that whether or not Council delays this ban has nothing to do with the amount of time that the judge will take to rule on this matter. If Council chooses not to delay this ban, that has no effect on how the judge will rule. A hearing is already scheduled on this issue, and that won't change. Mr. Foust stated that Mr. Giles may have unconsciously indicated his belief that Judge Bozza may overturn the ban, and that is a clear signal that this Council thinks the judge will overturn it because Council does not want to go forward. People are already beginning to prepare for this ordinance, and Mr. Foust does not believe to implement the ban will have much of an effect. However, whether or not Council decides to go forward with the ban does have a great deal to do with the credibility of council as far as how they deal with the issues that are facing them; and how Council is going to be perceived when things become sticky, and the manner in which they go about their business.

Mr. Leone's
Comments

Mr. Leone reminded Council that he had originally indicated he would be in favor of the smoking ban with no exceptions. He has tried to stick to that, and continues to believe that is the way this ban should have been implemented. Unfortunately, that did not happen. The issue of credibility has come up, and Mr. Leone expressed his resentment at the issue that this Council does not have credibility. Mr. Leone believes Council does have credibility. With respect to the issue of second readings, Mr. Leone pointed out there are many times Council has not worried about the public commenting on a second reading, and this isn't anything new.

Mr. Foust acknowledged that he has agreed to move issues to a second reading on routine matters involving little or no controversy. However, that is not the case with this particular ordinance. This is evident by the number of people who have come to speak before this Council on this particular matter. It is clear that this is a controversial issue.

Mr. Leone called for a vote on Ordinance Number 22, 2007, and it carried in a roll call vote of 5-2, Mr. Foust and Mrs. Loll voting no.

First Rdg.

Mr. Smith gave a reading of Ordinance Number 23, 2007, "Amending Erie County Smokefree Air Act of 2006 to Delete Section 9 C Regarding Nursing Homes."

Adjournment

There being no further business, the meeting was adjourned at 8:20 p.m.

Ann M. Bruno, Council Secretary
