

**COUNCIL MINUTES
JUNE 4, 2008**

1. Invocation: David M. Howells, Sr.
2. Pledge to the Flag
3. Roll Call
Ms. Eichenwald, Mr. Guridy, Mr. Howells, Mr. Phillips, Mr. Schweyer, and Mr. D'Amore
Mr. Donovan was absent.
4. Courtesy of the Floor

Paulette Hunter said she attended a meeting involving hate crimes. She's interested in trying to reduce gang-related activity in Allentown. She requested reactivating the Council of Youth Committee.

5. Approval of Minutes: May 21, 2008

6. Old Business:

Mr. D'Amore said Council's vote on the refinancing of the General Obligation Bonds and Water and Sewer Bonds were very successful. Wachovia Securities won the bid. The total savings for Allentown was \$686,376, or approximately 4%.

7. Communications: None.

8. REPORTS FROM COMMITTEES:

ADMINISTRATION – Mr. D'Amore for Chairperson Donovan

The Committee met on May 28th and forwarded an item on tonight's agenda. The next committee meeting has not yet been scheduled.

COMMUNITY AND ECONOMIC DEVELOPMENT – Chairperson Schweyer

The Committee toured St. Luke's on May 28th and has another fact-finding tour scheduled for June 11th. We will meet at St. Luke's Neighborhood Center and take a guided tour of 7th Street with Mr. Lewnes at 5:30; the Committee will meet again on June 12th at 6 PM.

PUBLIC WORKS – Chairperson Guridy

The Committee met tonight; the next meeting has not yet been scheduled.

PUBLIC SAFETY -Chairperson Howells

The Committee has not met since the last Council meeting; a future meeting has not yet been scheduled.

APPOINTMENTS - Chairperson D'Amore

The Committee has not met since the last Council meeting; a future meeting has not been scheduled.

LEGAL AND LEGISLATIVE – Chairperson Phillips

The Committee has not met since the last Council meeting; a future meeting has not yet been scheduled.

RULES AND CHAMBERS – Chairperson D'Amore

The Committee has not met since the last Council meeting; a future meeting is not yet scheduled.

OTHER COMMITTEE REPORTS

AEDC – Mr. D'Amore reported for Mr. Donovan. AEDC appointed a new director, Scott Unger. The board voted to convey the property on Jackson Street to the City for purposes of expanding the Jackson Street Community Park.

Presales Inspection Meeting: Mr. Donovan said the committee met on June 9th at 5:30 PM with the Bureau of Building Standings; June 25th is the first public meeting.

Blighted Property Review Board: Next meeting is scheduled for June 9th.

Council Reform – Mr. Schweyer said today at 5 PM marked the first meeting of this committee. Minutes and notes will be made available to the public.

CONTROLLER'S REPORT

Mr. Hoffman said he has nothing to report.

9. ORDINANCES FOR FINAL PASSAGE:

Bill 34

Amending the 2008 General Fund Budget to provide for a transfer of Eight Hundred Sixteen Thousand Three Hundred Twenty Eight and Forty-Nine Cents (\$816,328.49) Dollars from Public Works, Engineering, Capital Fund, to various accounts in Engineering for supplemental contracts for consultants for the American Parkway Project.

Mr. Guridy said the Public Works Committee forwarded this favorably, 3-0.

Mr. Hershman asked what's the status of the bridge's construction?

Richard Young said in 2010.

Mr. Hershman asked if a Capital Projects Status Report has been made available?

Mr. Hilliard said they received a draft this week.

Mr. Hershman asked if he gets that under the Freedom of Information Act?

Mr. Hilliard said the City Clerk can give it to him.

Bill 34 was adopted, 6 Yeas and 0 Nays.

Bill 38

Amending the 2008 General Fund Budget to provide for a supplemental appropriation of Seventy-Five Thousand (\$75,000) Dollars from the Pennsylvania Department of Education for repairs to the Allentown Public Library

Mr. D'Amore said the Administration Committee forwarded this favorably, 2-0. It's a pass-through grant from the state to the library.

Mr. Schweyer said the money will go toward a new roof and resealing windows.

Bill 38 was adopted, 6 Yeas and 0 Nays.

10. ORDINANCES FOR INTRODUCTION:

Bill 40

Amending the 2008 General Fund Budget to provide for a supplemental appropriation of Three Hundred Seventy-Five Thousand (\$375,000) Dollars to provide for the receipt of a grant from the Pennsylvania Department of Conservation and Natural Resources. This grant is *for the support of the Cedar Parkway Renovations within the parks of the City of Allentown.*

Bill 40 was referred to CEDC.

Bill 41

Amending the 2008 General Fund Budget to provide for a supplemental appropriation of One Hundred Twenty-five Thousand (\$125,000) Dollars to provide for the receipt of a grant from the Pennsylvania Department of Conservation and Natural Resources. This grant is *for the support of a Lehigh River Trail-East Side Trail Rehabilitation and Development Project.*

Bill 41 was referred to CEDC.

Bill 42

Amending the 2008 General Fund Budget to provide for a supplemental appropriation of Fifty Thousand (\$50,000) Dollars to provide for the receipt of a grant from the Pennsylvania Department of Conservation and Natural Resources. This grant is *for the support of a City Wide Trail Feasibility Study.*

Bill 42 was referred to CEDC.

Bill 43

Providing for the vacation of North Bird Street from Court Street to Linden Street, and Court Street from North 18TH Street to North Bird Street, in the Thirteenth Ward of the City of Allentown: St. Luke's Street Vacation

Bill 43 was referred to CEDC.

Bill 44

Providing for the vacation of North Dauphin Street from Hanover Avenue north for approximately 705-feet to the right-of-way line of the proposed New England Avenue, in the Fourteenth Ward of the City of Allentown.

Bill 44 was referred to CEDC.

Mr. Guridy and Mr. Phillips moved to suspend the rules to introduce and send to committee the following bill.

The rules were suspended, 5 Yeas and 1 Nay (Phillips).

Bill 45

Amending the 2008 General Fund to provide for a supplemental appropriation of \$17,000 from the Pennsylvania Department of Health to the Public Health Emergency Preparedness Program of the Health Bureau, Department of Community and Economic Development to encourage citizen preparedness for emergencies via the production of a GET Ready DVD focused upon preparedness for special populations.

Bill 45 was referred to CEDC.

11. CONSENT AGENDA: None

12. RESOLUTIONS ON SECOND READING: None

13. NEW RESOLUTIONS:

R37

Authorizes Keystone Municipal Collections to Bill and Collect Certain Taxes

R37 was referred to the Administration Committee.

14. NEW BUSINESS: None.

15. GOOD AND WELFARE:

Mr. Howells said this Council has been struggling for about 8 years as it relates to a Clean Air bill they've been trying to pass. They've always been rebuffed because of the preemption laws that are in Harrisburg. They prohibit the City of Allentown to be able to rightly take into consideration the health and welfare of our own citizens. We can't pass a clean air bill. We were advised by our attorney many times over not to pass an ordinance of such a nature because it would end up in court, with heavy litigation. The newspaper reported that some part of a clean air bill has been passed with some variances. He wanted a total ban in meeting establishments and public places. There were some exceptions. Scranton and Allegheny County went ahead and passed an ordinance, contrary to what they were advised to do. Harrisburg now wants to grandfather those 2 communities because they went ahead and did something they shouldn't have done, and we didn't. He was thinking about introducing it tonight. He would like a general opinion from his colleagues as to what to do with that issue. We'll have to suspend the rules to introduce it, and then we'll sit on it and see what Harrisburg is going to do. But at least it's been introduced.

Mr. Schweyer said you won't find a stronger advocate for a smoking ban than himself. The Pennsylvania State Senate voted down the compromise legislation which did not include an exemption for Allegheny or Scranton. The only municipality in the Commonwealth of Pennsylvania is Philadelphia.

Mr. Howells said there are some senators that want to grandfather those 2 municipalities, which they have not done.

Mr. Schweyer said it looks like the smoking ban is dead for the time being in Harrisburg. Should you wish to introduce it, he wholeheartedly will support him, because he agrees it needs to be done.

Mr. Howells and Mr. Schweyer moved to suspend the rules to introduce Bill 46-2008.

The rules were suspended by common consent.

ORDINANCE NO.

COUNCIL

FILE OF CITY COUNCIL

BILL NO.46 - 2007

June 4, 2007

AN ORDINANCE

An Ordinance amending Part 11, Health Code, by adding Article 1163 to the Code, entitled the Clean Air Indoor Protection Act.
BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALLENTOWN:

SECTION ONE: That Article 1163, Clean Air Indoor Protection Act, read as follows:

CLEAN INDOOR PROTECTION ACT

Findings
Prohibited Conduct
Penalty

Article 1163.01 Findings

Tobacco smoke, also referred to as secondhand smoke, contains more than 4,000 known chemical compounds that are released into the air as particles and gases.

According to a 2001 report issued by the National Cancer Institute, there are sixty-nine (69) known or probable carcinogens in tobacco smoke.

In 1986, the U.S. Surgeon General concluded that exposure to secondhand smoke can cause lung cancer in healthy nonsmokers.

In 1992, the U.S. Environmental Protection Agency (EPA) concluded that exposure to secondhand smoke is responsible for approximately 3,000 lung cancer deaths annually in U.S. nonsmokers, and that secondhand smoke has a statistically significant effect on the respiratory health of nonsmoking adults.

For children, the 1992 EPA report concluded that exposure to secondhand smoke is casually associated with increased risk of lower respiratory tract infections, such as bronchitis and pneumonia; increased prevalence of fluid in the middle ear; and, increased symptoms of upper respiratory tract irritation. Moreover, the EPA found that exposure to tobacco smoke increases the number of episodes and the severity of symptoms in asthmatic children, and causes thousands of non-asthmatic children to develop this condition each year.

A 2004 study appearing in the Journal of Occupational and Environmental Medicine, found that while three-fourths (3/4) of white collar workers are covered by smoke-free workplace policies, fewer than 13% of bartenders and 28% of wait staff have the benefit of a smoke-free workplace. In 2002, food service workers accounted for the fourth highest number of employees in the workforce; and, 20% were teenagers; 55.8% were female; approximately 12% were African-American; and, nearly 20% were Hispanic.

Ventilation devices are very expensive to retrofit into existing buildings and there is no scientific evidence which demonstrates that ventilation technology can eliminate the health risks associated with exposure to secondhand smoke. The Occupational Safety and Health Administration has concluded that ventilation is not an acceptable engineering control measure for controlling occupational exposure to secondhand smoke.

Based on 2002 health survey data, nearly 75% of Pennsylvanians do not smoke.

Many citizens of Allentown are exposed to tobacco smoke due to its widespread presence in public places and in the workplace. Exposure to secondhand smoke presents a substantial health risks to adult nonsmokers and children.

In order to protect and promote the public's health, safety and welfare, further restrictions on smoking in public places and in the workplace should be enacted.

1163.02 PUBLIC PLACES – PROHIBITED CONDUCT

Smoking

1. No person shall smoke or carry a lit cigar, cigarette, or pipe or use any match, flame or fire-producing device in any:

a. Indoor place of public assemblage having a capacity in excess of 100 persons;

b. Retail store designed to accommodate more than thirty (30) persons or in which more than twenty-five (25) persons are employed.

c. Other places where "No Smoking" signs are posted by order of the Fire Department pursuant to Title 4.

2. The prohibition of §10-602(1) shall not apply in any restaurant, beauty parlor, executive office, restroom, or any room particularly designated and prepared for smoking, or at any banquet, dinner, or function at which the public is seated at tables.

1. This Section shall be known and may be cited as, "The Clean Indoor Air Worker Protection Law."

2. Definitions:

a. Drinking Establishment." Any Food or Beverage Establishment whose on-site sales of food for consumption on the premises comprises no more than 10% of gross sales of both food, non-alcoholic and alcoholic beverages on an annual basis, or on such other basis as the Department of Licenses and Inspections shall by regulation provide with respect to such establishments that have been open for less than one full year.

b. "Enclosed Area." All space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passageways) which extend from the floor to the ceiling.

c. "Food or Beverage Establishment." Any restaurant, bar, coffee shop, cafeteria, sandwich stand, diner, fast food establishment, cafeteria, banquet hall, catering facility, food court, or any other eating or drinking establishment which gives or offers for sale food or drink to the public, guests, or employees whether for consumption on or off the premises, and including any such eating or drinking establishment located in a Lodging Establishment, Sports or Recreational Facility, or Theater or Performance Establishment.

d. "Lodging Establishment." Any hotel, motel, inn, resort, guest house, bed and breakfast establishment, or other building which holds itself out by any means, including advertising, license, registration with an innkeepers' group convention listing association, travel publication or similar association or with a government agency, as being available to provide overnight lodging or use of facility space, such as space for food and beverage service or meeting rooms, for consideration to persons seeking temporary accommodation.

e. "Private Club." Any reputable group of individuals associated together as a not-for-profit organization for legitimate purposes of mutual benefit, entertainment, fellowship or lawful convenience which regularly and exclusively occupies, as owner or lessee, a clubhouse or quarters for the use of its members; and, which holds regular meetings, conducts its business through officers regularly elected, admits members by written application, investigation and ballot, and charges and collects dues from elected members. The club shall either be incorporated or, if unincorporated, provide proof of its continuous existence for the past ten (10) years in a manner deemed sufficient by the Department of Health.

f. "Smoking." Inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe or other such device which contains tobacco or other smoke producing products.

g. "Specialty Tobacco Establishment." A Food or Beverage Establishment whose on-site sales or rentals of tobacco, tobacco-related products and accessories for consumption or use on the premises comprises fifteen (15%) percent or more of gross sales on an annual basis, or on such other basis as the Department of Licenses and Inspections shall by regulation provide with respect to such establishments that have been open for less than one full year. For purposes of computing gross sales data, sales from vending machines shall not be included.

h. "Sports or Recreational Facility." Any enclosed or unenclosed stadium, pavilion, gymnasium, health club, spa, swimming pool, roller or ice rink, bowling alley, boxing arena, billiard parlor, pool hall or other similar place where members of the general public assemble either to engage in physical exercise, participate in recreational activities or athletic competition, or witness sports or other events.

i. "Theater or Performance Establishment." Any enclosed or unenclosed facility primarily used for the exhibition of any motion picture, concert, stage drama, musical recital, dance, lecture or other similar performance.

j. "Tobacco products Distribution Business." An establishment whose primary business is the retail and/or wholesale sale of tobacco, tobacco-related products and accessories for consumption on or off the premises. For purposes of this

definition the term "primary" shall mean that ninety (90%) percent or more of the gross sales on an annual basis, or on such other basis as the Department of Licenses and Inspections shall, be regulation, provide with respect to such establishments that have been open for less than one full year, shall derive from tobacco, tobacco-related products and accessories. The business may also include areas for the import, export, storage and distribution of tobacco, tobacco-related products and accessories; areas for testing of such products and accessories by employees; and, accessory office space. Such business shall not include the selling or offering of any food or beverages to customers.

k. "Workplace." Any Enclosed Area under the control of a public or private employer where one or more employees are routinely assigned and normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms, meeting rooms, class rooms, employee cafeterias and hallways. A private residence is not a Workplace unless it is used as a child care, adult day care or health care facility.

3. Smoking Prohibited

a. Beginning on September 1 2009, no person shall smoke in any of the following places, except as provided in this Article.

1) In any Enclosed Area to which the general public is invited or in which the general public is routinely permitted, including, but not limited to:

a) Elevators, restrooms, lobbies, reception, areas, hallways, and other common-use areas;

b) Retail or wholesale stores;

c) Service establishments, office buildings, banks, or financial institutions;

d) Food or Beverage Establishments;

e) Galleries, libraries and museums;

f) Any school or educational or vocational facility;

g) Any licensed gaming facility;

h) Any City-owned or leased building or facility;

i) Any enclosed place at which a public meeting is held by any public agency, during such time

as a public meeting is in progress;

j) Any health care facility, including, but not limited to hospitals, clinics, physical therapy facilities, and doctors' offices, and including any private residence used as a health care facility during those hours it is used as such;

k) Any child care or adult day care facility, including any private residence used as a child care or adult care facility during those hours it is used as such. In addition, no person shall smoke in a vehicle when such vehicle is being used for the public transportation of children or adults as part of day care transportation;

l) Lobbies, hallways, and other common areas in apartment buildings, in condominiums and other multiple-unit residential facilities, or in retirement facilities and nursing homes; and

m) Lobbies, hallways, and other common areas in Lodging Establishments, and in no less than seventy-five (75%) percent of the sleeping quarters within a Lodging Establishment that are available for rent to guests.

2. In any vehicle of public transportation or in any fare-paid area of commuter rail or other transit stations or terminals owned, operated or controlled by the Southeastern Pennsylvania Transportation Authority, except in an indoor area within such stations or terminals where such conduct may be specifically designated by the Authority to be permitted;

3. In any Sports or Recreational Facility;

4. In any Theater or Performance Establishment ;

5. In any Workplace;

6. In any place where "No Smoking" signs are posted by order of the Fire Department.

7. Outdoors within twenty (20') feet of any entrance to any Enclosed Area in which smoking is prohibited

under this Section.

b. Exceptions. The provisions of this Article shall not apply:

1. In a Tobacco Products Distribution Business;

2. In a Specialty Tobacco Establishment provided that Specialty Tobacco Establishment was in legal operation and had a valid business privilege license on the effective date of this Ordinance.

3. Within up to twenty-five (25%) percent of the sleeping quarters within a Lodging Establishment that are available for rent to guests.

4. At any sidewalk café licensed with the City or otherwise permitted by special ordinance, or any outdoor deck, patio or similar outdoor service area which is part of a Food or Beverage Establishment.

5. In a Private Club provided that all of the following conditions are satisfied:

a) The Private Club is in legal operation and has a valid certificate of occupancy and business privilege license on the effective date of the Ordinance.

b) The Private Club adopts a resolution, by a minimum two-thirds (2/3) vote of its board or membership (in accordance with its by-laws), approving the filing of a waiver to the Health Department to qualify for an exception from the provisions of this Article, and a copy of such resolution is submitted as part of the waiver request; and, all employees of the Private Club are notified in writing at least one week in advance of such vote and the club secretary certifies, in writing, as part of the waiver request that such notice was provided to all employees;

c) The Private Club applies for a waiver from the Health Department within ninety (90) days of the effective date of the Ordinance.

d) Prior to receipt of a waiver, the Private Club is not delinquent on the payment of any City or School District taxes, charges, fees, rents, or claims, unless such Club has entered into an agreement to pay any such delinquency and is abiding by the terms of such agreement; and prior to receipt of a waiver, the Private Club has no Code violations, and has all required zoning approvals, licenses and permits;

e. The Private Club agrees to notify the Health Department, in writing, immediately of any changes in the operation of the Private Club that would result in revocation of the waiver;

f. Any such waiver is automatically revoked and cannot be renewed if the Private Club's charter is terminated, if there is a change in the operation of the facility such that it no longer qualifies as a Private Club, or if any liquor license owned by the Private Club is transferred to a new location; and

g. If a Private Club, or a portion of a Private Club, which has received a waiver is rented, leased or otherwise utilized for an event to which the general public or non-members are invited, no person shall smoke in the Private Club, or in the portion of the Private Club, for the duration of such event.

h. In a Drinking Establishment provided that all of the following conditions are satisfied:

1) The Drinking Establishment is in legal operation and has a valid certificate of occupancy and business privilege license on the effective date of the Ordinance.

2) The Drinking Establishment applies for a waiver from the Health Department within ninety (90) days of the effective date of the Ordinance.

3) All Employees of the Drinking Establishment are notified, in writing, at least one week in advance of such application for a waiver and the owner certifies, in writing, as part of the waiver request that such notice was provided to all employees;

4) Prior to receipt of a waiver, the Drinking Establishment is not delinquent on the payment of any City or School District taxes, charges, fees, rents or claims, unless such establishment has entered into an agreement to pay any such delinquency and is abiding by the terms of such agreement; and, prior to the receipt of a waiver, the Drinking Establishment has no Code violations, and has all required zoning approvals, licenses and permits;

5) The owner must provide the previous tax year's receipts, expenses and revenue figures in such manner as prescribed by the Department of Revenue so as to verify the food and alcohol ratio to qualify for the waiver, and the owner must agree to be subject to an audit by the Administration for purposes of monitoring compliance with this waiver;

6) The Drinking Establishment agrees to notify the Health Department, in writing, immediately of any changes in the operation of the Drinking Establishment, or of any revocation or transfer of a liquor license owned by the Drinking Establishment, that would result in revocation of the waiver;

7) Any such waiver is automatically revoked and cannot be renewed if there is a change in the operation of the facility such that it no longer qualifies as a Drinking Establishment, or if any liquor license owned by the Drinking Establishment is revoked or transferred to a new location; and

8) Any such waiver must be renewed annually;

4. Smoking Prohibitions in the Workplace.

a. No later than the effective date of this Ordinance, all employers with a Workplace that is subject to the provisions of this Article within the City shall adopt, implement, make known and maintain a written policy that prohibits smoking within any Workplace. This requirement shall not apply to any Workplace covered by a collective bargaining agreement or similar binding agreement between labor and management that includes provisions regarding smoking in the Workplace, and that is in effect when this Ordinance takes effect. Upon the expiration of any such collective bargaining agreement or similar binding agreement between labor and management, however, the provisions of this Article, which prohibits smoking in the Workplace, shall apply.

b. An employer's written smoke-free policy shall be communicated to all employees within thirty (30) days after its adoption, and an employer shall provide a copy of the written policy upon request to any employee or prospective employee.

5. Duties of Persons in Control of Premises.

a. The owner, operator, manager, employer or other person in control in every place where smoking is regulated by this Section shall take the following actions, and shall not be cited for any violations of this Section if all such actions are taken:

1) Post "No Smoking" signs and other signs relating to smoking on the premises in compliance with regulations to be promulgated by the Health Department.

2) Take reasonable measures to see to it that no person smokes in such place in violation of this Section. The following measures shall be deemed sufficient to comply with this requirement:

a) Informing any person who smokes in such place that smoking is prohibited by law, and requesting such person to immediately refrain from smoking or leave the area in which smoking is prohibited; and

b) Reporting immediately to the Health Department or to any other person authorized to enforce this Section if a person does not comply with a request to immediately refrain from smoking or leave the area in which smoking is prohibited.

b. The owner or manager of a building, with respect to any portion of the building leased to others ("Leased Premises"), in which smoking is regulated by this Section, shall take the following actions, and shall not be cited for any violations of this Section if all such actions are taken:

1) Post "No Smoking" signs and other signs relating to smoking on the premises in compliance with regulations to be promulgated by the Health Department.

2) Advise the tenant that smoking is prohibited in the Leased Premises, and include "No Smoking" provisions in any lease entered into after the date this Section becomes law; and

3) Refer any complaints which the owner or manager receives about smoking in the Leased Premises immediately to the tenant in writing.

6. Duties of the Health Department on Waiver Requests

a. The Health Department shall review all requests for waivers for Private Clubs and Drinking Establishments pursuant to this Article and shall coordinate with the Department of Licenses and Inspections, the Department of Revenue, and any other appropriate agencies in making determinations on the granting of waivers.

b. No later than six (6) months after the effective date of the Ordinance, the Health Department shall have made final decisions on all requests for waivers and shall issue a report to the Mayor, the President of City Council including, but not limited to: The number of waiver applications by Private Clubs and by Drinking Establishments, the number and addresses of those establishments approved, and the number and addresses of those establishments denied and the reasons for denial.

7. Enforcement and Penalties.

a. This Section shall be enforced by the Health Department, its duly authorized employees, or any other person authorized by the Mayor to enforce this Section.

b. Any person who violates this Section shall be subject to a fine of Three Hundred (\$300) Dollars for each violation.

c. Nothing in this Section shall be construed to create any private right of action for enforcement of its provisions or to authorize any person to file suit to recover damages or seek equitable relief for any violation of this Section.

1163.3 PENALTY

Except as otherwise specifically provided, the penalty for violation of any provision of this Chapter is a fine not exceeding Twenty-five (\$25) Dollars.

SECTION TWO: That this Ordinance takes effect ten (10) days after final passage.

SECTION THREE: That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

Bill 46 was referred to the Public Safety Committee.

16. Adjournment:

The meeting was adjourned by 8:15 PM.

Michael P. Hanlon
City Clerk