

**ALBANY COMMON COUNCIL
MINUTES OF A REGULAR MEETING**

Thursday, September 10, 2009

The Common Council was convened at 7:00 p.m. and was called to order by Council President Morris.

The roll being called, the following answered to their names: Council Members Calsolaro, Conti, Ellis, Fahey, Fox, Herring, Igoe, McLaughlin, O'Brien, Rosenzweig, Sano, Scalzo, Smith, and Timmons.

Also present was the following staff: John Marsolais, Patrick Jordan, Barbara Samel, and Cashawna Parker.

Council Member O'Brien led the Pledge of Allegiance.

PUBLIC COMMENT PERIOD

1. Dr. Leonard Morgenbesser, 217 Tampa Ave., Albany, NY 12208 (Gun Violence)
2. Marlon Anderson, 491 Livingston Ave. Albany, NY 12206 (Various Issues)
3. Debbie Brady, 67 Osborne Rd., Albany, NY 12205 (Yearly Fire Inspections for Public Dwellings)
4. Vincent Riguso, 13 Beach Ave., Albany, NY 12203 (Various Issues)

There being no further speakers, the President declared the Public Comment Period closed.

APPROVAL OF MINUTES FROM PREVIOUS MEETING

Council Member Conti made a motion to approve the minutes of the April 6, April 20, May 15, June 16 and July 6, 2009, which was approved by unanimous voice vote.

CONSIDERATION OF LOCAL LAWS

Council Member Conti made a motion to hold the Local Laws on the pending agenda, which was approved by unanimous voice vote.

REPORTS OF STANDING COMMITTEES

General Services, Health and Environment – Council Member O'Brien stated that the committee would be meeting September 23, 2009 to discuss pesticide use at the landfill and Ordinance 58.91.09 (multiresidential recycling)

CONSIDERATION OF ORDINANCES

Council Member Conti introduced the following, which was referred to the Law, Buildings and Code Enforcement Committee:

Ordinance Number 57.91.09

AN ORDINANCE AMENDING CHAPTER 255 (PEACE AND GOOD ORDER) OF THE CODE OF THE CITY OF ALBANY BY ADDING THERETO A NEW ARTICLE IX ENTITLED: "PROHIBITION AGAINST CERTAIN FORMS OF AGGRESSIVE SOLICITATION"

The City of Albany, in Common Council convened, does hereby ordain and enact as follows:

Section 1. Chapter 255 (Peace and Good Order) of the Code of the City of Albany is amended by adding thereto a new Article IX entitled "Aggressive Solicitation" to read as follows:

ARTICLE IX
Prohibition Against Certain Forms of Aggressive Solicitation

§ 255-57. Findings and intent.

The Common Council of the City of Albany recognizes a constitutional right to beg or solicit in a peaceful and non-threatening manner. The Council finds, however, that an increase in aggressive solicitation within the city has become disturbing and disruptive to residents and businesses, and has contributed not only to the loss of access to and enjoyment of public places, but also to an enhanced sense of fear, intimidation and disorder.

Aggressive panhandling usually includes approaching or following pedestrians, the use of abusive language, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic. The council further finds that the presence of individuals who solicit money from persons at or near banks or automated teller machines is especially troublesome.

This law is timely and appropriate because current laws are insufficient to address the aforementioned problems. The restrictions contained herein are neither overbroad nor vague and are narrowly tailored to serve a substantial government interest. Furthermore, in enacting this legislation, the council recognizes the availability of community service and other sentencing alternatives, which may be appropriate remedies for violations of this law.

The law is not intended to limit any persons from exercising their constitutional right to solicit funds, picket, protest or engage in other constitutionally protected activity. Its goal is instead to protect citizens from the fear and intimidation accompanying certain kinds of solicitation that have become an unwelcome and overwhelming presence in the city.

§ 255-58. Definitions.

For the purposes of this Article, the following terms shall have the following meanings unless the context clearly requires otherwise:

A. "Aggressive manner" – (1) Approaching or speaking to a person, or following a person, before, during or after soliciting, asking or begging, if that conduct is intended or is likely to cause a reasonable person to:

(a) fear bodily harm to oneself or to another, damage to or loss of property or the commission of any offense as defined in section ten of the penal law upon oneself or another; or

(b) otherwise be intimidated into giving money or other thing of value; or

(c) suffer unreasonable inconvenience, annoyance or alarm.

(2) Intentionally touching or causing physical contact with another person or an occupied vehicle without that persons consent in the course of soliciting, asking or begging;

(3) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle to take evasive action to avoid physical contact; or

(4) Using violent or threatening gestures toward a person solicited.

B. "Solicit, ask or beg" – Includes using the spoken, written, or printed word, or bodily gestures, signs or other means with the purpose of obtaining an immediate donation of money or other thing of value or soliciting the sale of goods or services.

C. "Public place" – A place to which the public or a substantial group of persons has access, including, but not limited to: any sidewalk, street, highway, right-of-way, parking lot, plaza, transportation facility, school, place of amusement, park or playground, as well as any hallway, lobby or other portion of an apartment house or hotel not constituting a room or apartment designed for actual residence.

D. "Bank" – Any banking organization as defined in section 2 of the New York State Banking Law which has as its purpose or among its purposes the receipt of deposits.

E. "Check cashing business" – Any person duly licensed by the New York State Superintendent of Banks to engage in the business of cashing checks, drafts or money orders for consideration pursuant to provisions of article 9-A of the New York State Banking Law.

F. "Automated teller machine" – A device, linked to a financial institutions account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries and mortgage and loan payments.

G. "Automated teller machine facility" – The area comprised of one or more automated teller machines, and any adjacent space which is made available to banking customers after regular business hours.

§ 255-59. Prohibited acts.

A. No person shall solicit, ask or beg in an aggressive manner in any public place.

B. No person shall solicit, ask or beg within ten feet of any entrance or exit of any bank or check cashing business during its business hours or within ten feet of any automated teller machine during the time it is available for customers' use. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility. Provided further that no person shall solicit, ask or beg within an automated teller machine facility where a reasonable person would or should know that he or she does not have permission to do so from the owner or other person lawfully in possession of such facility. Nothing in this subsection shall be construed to prohibit the lawful vending of goods and services within such areas.

C. No person shall approach an operator or other occupant of a motor vehicle while such vehicle is located on any street to solicit, ask or beg, or for the purpose of either performing or offering to perform a service in connection with such vehicle or otherwise soliciting the sale of goods or services, if such approaching, performing, offering or soliciting is done in an aggressive manner as defined in this article. Provided, however, that this paragraph shall not apply to services rendered in connection with the lawful towing of such vehicle or in connection with emergency repairs requested by the operator or other occupant of such vehicle.

§ 255-60. Exemptions.

The provisions of this article shall not apply to any unenclosed automated teller machine located within any building, structure or space whose primary purpose or function is unrelated to banking

activities, including but not limited to supermarkets and school buildings, provided that such automated teller machine shall be available for use only during the regular hours of operation of the building, structure or space in which such machine is located.

§ 255-61. Penalties.

Any violation of the provisions of this article shall be punishable by a fine which shall not exceed one hundred dollars (\$100) in amount or imprisonment for not more than fifteen (15) days or both.

§ 255-62. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, the remainder of this article and the application of such provision to other persons or circumstances shall not be rendered invalid thereby.

Section 2. This ordinance shall take effect thirty (30) days after enactment into law.

Council Member Conti introduced the following, which was referred to the General Services, Health and Environment:

Ordinance Number 58.91.09

AN ORDINANCE AMENDING PART 4 (RESIDENTIAL OCCUPANCY PERMIT) OF ARTICLE IX (GENERAL PROVISIONS) OF CHAPTER 231 (HOUSING) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO SOURCE SEPERATION, COLLECTION AND DELIVERY OF RECYCLABLES IN MULTIRESIDENTIAL COMPLEXES

The City of Albany, in Common Council convened, does hereby ordain and enact as follows:

Section 1. Subsection A of section 231-130 of Article IX of Part 4 of Chapter 231 of the Code of the City of Albany is mended by adding a new paragraph (5) to read as follows:

(5) When inspecting a dwelling unit within a multiresidential complex, as defined in section 313-12 of this code, the department shall inspect and certify compliance with provisions of section 313-14 of this code requiring the establishment of solid waste private collection and source separation facilities in such complexes. A residential occupancy permit for a dwelling under this chapter shall not be issued unless the multiresidential complex is in compliance with section 313-14 of the this code.

Section 2. This ordinance shall take effect thirty (30) days after enactment.

Council Member Sano introduced the following, which was held:

Ordinance Number 59.91.09

AN ORDINANCE AUTHORIZING AND DIRECTING THE GRANT OF A PERMANENT EASEMENT TO NATIONAL GRID OVER AND UPON A PORTION OF THE CITY RIGHT-OF-WAY OF MAPLEWOOD STREET AND THE CITY-OWNED PROPERTY LOCATED AT 441 NEW SCOTLAND AVENUE IN THE CITY OF ALBANY

The City of Albany, in Common Council convened, does hereby ordain and enact:

Section 1. It is hereby authorized that the City of Albany grant a permanent easement to National Grid over and upon a portion of the City right-of-way of Maplewood Street, adjacent to 441 New Scotland Avenue, as well as over and upon the City-owned property located at 441 New Scotland Avenue in the City of Albany.

Section 2. The form, content, terms and conditions of such easement shall be approved by the Corporation Counsel.

Section 3. The Grantees shall not hinder, interfere with, prevent, delay, obstruct or adversely affect the Grantor in the reasonable exercise of its governmental operations or function.

Section 4. This ordinance shall take effect immediately.

The remaining ordinances on the pending agenda were held at the request of Council Member Conti.

CONSIDERATION OF RESOLUTIONS

Council Member Herring offered the following, which was referred to the Planning, economic Development and Land Use Committee:

Resolution Number 72.91.09R

RESOLUTION OF THE COMMON COUNCIL CONSENTING TO THE APPOINTMENT OF CHRISTOPHER T. BURKE AS A MEMBER OF THE ALBANY PARKING AUTHORITY

RESOLVED, that in accordance with Section 1493-c of the Public Authorities Law of the State of New York, the Common Council hereby consents to the Mayor's appointment of Christopher T. Burke as a member of the Albany Parking Authority, for a term of office expiring January 2, 2014.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately

Council Member Herring offered the following, which was referred to the Planning, economic Development and Land Use Committee:

Resolution Number 73.91.09R

RESOLUTION OF THE COMMON COUNCIL CONSENTING TO THE APPOINTMENT OF BETH LACEY AS A MEMBER OF THE ALBANY PARKING AUTHORITY

RESOLVED, that in accordance with Section 1493-c of the Public Authorities Law of the State of New York, the Common Council hereby consents to the Mayor's appointment of Beth Lacey as a member of the Albany Parking Authority, to fill the balance of a term expiring January 2, 2013.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

Council Member Conti asked and received majority consent to add to the pending agenda Resolution Numbers 74.91.09R, 75.91.09R, and 76.91.09R, which was approved by unanimous voice vote.

Council Members Scalzo, Smith, Fahey, Igoe, O'Brien, Calsolaro, Conti, Ellis, Fox, Herring, McLaughlin, Rosenzweig, Sano, and Timmons introduced the following resolution, which was approved:

RESOLUTION NUMBER 74.91.09R(MC)

RESOLUTION OF THE COMMON COUNCIL APPOINTING RONALD BARRETT AS A MEMBER OF THE GUN VIOLENCE PREVENTION IMPLEMENTATION TEAM

RESOLVED, that Ronald Barrett be and hereby is appointed as a member of the Gun Violence Prevention Implementation Team for a two year term.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

**Note: There was discussion from Council Member Scalzo thanking Dr. Leonard Morgenbesser for years of lobbying the Council and he also thanked Council Member Calsolaro and the Public Safety Committee.*

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Conti, Ellis, Fahey, Fox, Herring, Igoe, O'Brien, Rosenzweig, Sano, Scalzo, Smith, and Timmons

Affirmative 13 Negative 0 Abstain 0

Council Members Scalzo, Smith, Fahey, Igoe, O'Brien, Calsolaro, Conti, Ellis, Fox, Herring, McLaughlin, Rosenzweig, Sano, and Timmons introduced the following resolution, which was approved:

RESOLUTION NUMBER 75.91.09R(MC)

RESOLUTION OF THE COMMON COUNCIL APPOINTING HARRY CORBITT AS A MEMBER OF THE GUN VIOLENCE PREVENTION IMPLEMENTATION TEAM

RESOLVED, that Harry Corbitt be and hereby is appointed as a member of the Gun Violence Prevention Implementation Team for a two year term.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Conti, Ellis, Fahey, Fox, Herring, Igoe, O'Brien, Rosenzweig, Sano, Scalzo, Smith, and Timmons

Affirmative 13 Negative 0 Abstain 0

Council Members Scalzo, Smith, Fahey, Igoe, O'Brien, Calsolaro, Conti, Ellis, Fox, Herring, McLaughlin, Rosenzweig, Sano, and Timmons introduced the following resolution, which was approved:

RESOLUTION NUMBER 76.91.09R(MC)

RESOLUTION OF THE COMMON COUNCIL APPOINTING JOHN CUTRO AS A MEMBER OF THE GUN VIOLENCE PREVENTION IMPLEMENTATION TEAM

RESOLVED, that John Cutro be and hereby is appointed as a member of the Gun Violence Prevention Implementation Team for a two year term.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Conti, Ellis, Fahey, Fox, Herring, Igoe, O'Brien, Rosenzweig, Sano, Scalzo, Smith, and Timmons

Affirmative 13 Negative 0 Abstain 0

The remaining resolutions on the pending agenda were held at the request of Council Member Conti.

MISCELLANEOUS AND UNFINISHED BUSINESS

Council Member McLaughlin offered the following, which was approved by a majority voice vote:

RESOLVED THAT THE FOLLOWING PERSONS BE AND HEREBY ARE APPOINTED COMMISSIONERS OF DEEDS FOR THE CITY OF ALBANY, NEW YORK FOR THE TERM ENDING DECEMBER 31, 2010, AND WAIVE THE READING OF THE NAMES:

Fey, John, 103 Rosemont St, Albany, NY 12203
Fowler, Adam R., 175 S. Swan St, Apt 1D, Albany, NY 12210
Golden, Anthony, 14 Clayton Pl, Albany, NY 12209

Council Member Calsolaro discussed an ordinance regarding reporting from the police department on calls from shots fired. He stated that he spoke with Chief Tuffey about getting that information and also about quarterly reports, but never got them. He stated that now there is no Police Chief and that he is asking the Public Safety Committee to schedule a meeting. He discussed the possibility of the Public Safety Officers (PSOs) being moved to the Parking Authority and stated that the Council should look at these issues.

Council Member Conti wished all the Council Members the best for this upcoming election.

ADJOURNMENT

A motion was made for adjournment.

Council President Morris stated, hearing no objections, that the Council was adjourned.

A true record of the Common Council Minutes of September 10th, 2009.

CASHAWNA PARKER
SENIOR LEGISLATIVE AIDE TO THE
ALBANY COMMON COUNCIL