

# **WEIRTON CITY COUNCIL COUNCIL MEETING - SPECIAL MONDAY, MAY 23, 2016 3:00 PM**

A special meeting of the Common Council of the City of Weirton, Hancock and Brooke Counties, West Virginia was held on Monday, 23, 2016 at 3:00 P.M. in Council Chambers of the Weirton Municipal Building.

## **Councilmembers in Attendance:**

Tim Connell	Councilmember Ward 1
Charles Wright	Councilmember Ward 2
Fred S. Marsh	Councilmember Ward 3
George E. Ash, Sr.	Councilmember Ward 4
Douglas L. Jackson	Councilmember Ward 5
Enzo Fracasso	Councilmember Ward 6
Terry Weigel	Councilmember Ward 7

## **City Officials in Attendance:**

Rob Alexander	Police Chief
Travis Blosser	City Manager
Vince Gurrera	City Attorney
Bruce Lamp	Interim Chief Code Official
Thomas J. Maher, Jr.	Finance Director
A. D. Mastrantoni	Utilities Director
Rik Rekowski	Library Director
Rod Rosnick	Public Works Director
Jerry Shumate	Fire Chief

**Mayor Miller** led everyone in the reciting of the Pledge of Allegiance.

**Mayors Awards and Proclamations:**  
**NONE**

## **Citizens Remarks:**

### **Barbara Sadler – ASAP/Peer Recover – Open Containers**

Hi my name is Barbara Sadler. I am a volunteer for the Advocate for Substance Abuse Prevention Coalition. I am also a certified recovery advocate, and I have been in recovery for 27 years. I am speaking here today because I, like many fellow citizens, have some reservations about the new Ordinance passing that will allow the sale, and consumption of alcohol beverages at community events. As we all know, alcohol is a drug. It can be abused, and can cause addiction. Alcohol is a gateway drug. With the heroin epidemic that we have in our community, we do not believe that we should enable those, who are at risk for addiction to have more access, or exposure to drugs such as alcohol. Another concern I have, is the access to those who are under 21 might have to alcohol beverages at community events. Additionally, this Ordinance passing could potentially increase the risk of driving under the influence in our city. Because of these concerns, I am asking the City to consider mandating the following provisions for public events that may serve alcohol should this Ordinance pass:

1. That all servers be required to have TIPS Training so they are familiar with who they serve, including whether someone is too intoxicated to be served, or whether or not the person they are serving is of legal age.
2. The enforcement of a separate purchasing and drinking area that will prohibit anyone under the age of 21 from entering.
3. Limiting the number of drinks being served at these events, by providing legal age drinkers with a certain amount of tickets to be exchanged for each purchase of Alcohol (say two or three).
4. That wristbands and or stamps be required of those purchasing drinks. So they can be carded in advance in an effort to prevent underage drinking.

As a concerned citizen, I appreciate you taking the time to consider these matters.  
Thank You.

## **Communications:**

**NONE**

**Request by Council to convene into Executive Session consistent with WV Code 6-9-A-4 to discuss personnel matters.**

**N/A**

## **OLD BUSINESS:**

# **1. Second Reading of Ordinance No. 1993. An Ordinance Establishing Fireworks Safety for the City of Weirton (Councilman Marsh)**

A motion was made by Councilman Marsh, second by Councilman Wright

## **Councilman Ash – Comment Mayor**

I am having trouble with this Ordinance because I am having people call me about it. Are we going to allow this to be sold all year round, and I really don't want to hear them all year round. It is bad enough we hear this from June to August, and I know for a fact, that police are called consistently about fireworks that are going off at all hours of the night. There is not much they can do about it because they really can't find the person once you call the police department. Just their presence may stop it for a while, but they will come back again.

Why are we doing this? What is the real reason behind this? If it is going to be a permanent structure, it has to be sold all year around in one place where ever it is going to be. What is the real reason we are doing this? Why are we going to go ahead and do this all year round? This does not make any sense to me. I do not want it, and not just the residents in my ward other wards have called me, and said they do not want it. I don't know if they called you or not, but they have called me. Since Fred has sponsored this, I would like to know what is the real reason for this.

## **Councilman Marsh**

Back in March the legislature passed a Bill that prevents, I am going to use the basic term The Marc Fireworks Tax. Up until June 1<sup>st</sup> of this year all you could buy from this State was sparklers. After the first of June you are going to be able to buy boomers. Things that go up in the air and stuff that goes bang. According to the Bill, the rules were set to be established by the State Fire Marshall and finally published them last week. By State Law, we have to meet minimums of these rules, but nothing says we can't exceed them. These firework tents usually end up in my Ward. I would prefer to see them in a building that they are open year round, paying their property taxes, paying their police and fire service fee, paying their immunity fee. Big thing is the safety. That is what we are after here. The rules from the Fire Marshall are sometimes ambiguous and sometimes contradictory. I tried to write this as clear cut as I could.

## **Councilman Ash**

I would like to ask the Fire Chief if he knows of these rules and how they are going to be enforced.

## **Fire Chief Shumate**

Yes sir, one of the rules that the West Virginia Professional Fire Chiefs Meeting we had last month, the Fire Marshall came to speak with us. The state has asked for rule of three categories; once again I am not completely familiar with that terminology. You have novelty which is the sparklers and the things that fizz and buzz and don't bang. You have commercial use, or display use, which you have to have a license to shoot up. The third category, which is now from Steubenville Firework's, they are allowed to boom. I don't know the terminology they are using for the small fireworks. They have not allowed the silver tubes, the M200 and the large explosives, but the State has approved and wants the income from fireworks.

The different structures depending on the size of the building, and how it has been used, the tents which usually fall under 800 square feet do not have to be sprinklered. A commercial building over 6,000 square feet, if it is a new building, has to be sprinklered and a commercial building that is an old building, and when they say new and old, did it sell fireworks last year. If it did not sell fireworks previous, it is a new building no matter the age of the structure. So, it has to meet the 6,000 square feet sprinklers for the building. Your buildings have to be sprinklered. I believe the Fire Marshall has said you cannot just do a quick add-on, lean-to against the building, they are allowing temporary buildings, and temporary buildings do not have sprinklers. The permanent structures do, and that is the rule.

**Councilman Ash**

Are you going to enforce the sprinkler system?

**Fire Chief Shumate**

The Fire Marshall's Office is solely responsible for the enforcement.

**Councilman Ash**

So you have no enforcement powers at all?

**Fire Chief Shumate**

If they choose to allow us to help them, yes, but the Fire Marshall has the authority having jurisdiction over that.

**Councilman Ash**

How often does the Fire Marshall come into this area?

**Fire Chief Shumate**

You have one based out of Wheeling. He is in town frequently.

**Mayor Miller**

Does anyone else have a question?

**Councilman Connell**

In Pennsylvania, and Ohio, today they sell these fireworks the boomers as George is talking about. Do we not, in the City of Weirton, have an Ordinance that you cannot set fireworks off anyhow in the City of Weirton. If we are going to sell here, you think they are crossing the line to go somewhere else to set them off. How would we enforce that? Even if we did not allow this, or allow it, they are going to go across into Steubenville or Ohio across into Pennsylvania and buy the fireworks and bring them back here, which they have been doing for years, I know the Police Department has been running around chasing their tails trying to catch a lot of them setting them off, and they cannot get them. So what do we do? I talked to Fred earlier about this. We are losing our rights left and right. We cannot go anywhere without showing I.D. It is like big brother is really taking over. When you are buying fireworks you have to show I.D. and show that you live in the State of West Virginia. They have to keep that on record for three (3) months. If I want to buy sparklers for my grandchildren and little poppers on the ground, I am not showing my I.D. Why should I have to do that? When is this going to stop? Safety factor yes, I understand that, and I read the letter that we all got in our packets from

the gentlemen that has been coming in since 2003, and I have asked the Chief. Has there been any problem with them selling the fireworks since 2003.

**Fire Chief Shumate**

We have not had a fire incident.

**Councilman Connell**

So, they really take care. They have their own fire system set up to make sure that on themselves. Then the question was asked in the letter, and I will ask you, would your rather have your men go in to a burning building or stand outside putting a hose on a tent that is burning.

**Fire Chief Shumate**

My preferred would be that the building be completely sprinklered. We don't have large fires. I know there was plenty of discussion on how safe or unsafe the temporary tents are right now with the novelty items. You can stand back and throw water on them. When stuff starts exploding it is whole new ball game. Do you want explosives sitting out in a tent within the public or do you want them contained to a building.

**Councilman Connell**

Another question then, I am going to ask you. Can we, as a City of Weirton, man the sale of those boomers in Weirton? Even the State has allowed it. Do we have to as a City allow it here.

**Travis Blosser, City Manager**

From a point of view from me, that would be something Vince and I would have to look at under your Home Rule status of whether or not there would be further discussion. Vince and I would have to look at Home Rule as a possibility of restricting the sale of those items through Home Rule. I think some cities, and there was an article today in the Charleston Gazette, where Mayor Danny Jones in Charleston was talking about this specific issue. I think they were talking of their specific issue as a whole with the discharge of these not on the fourth of July but throughout the year these being discharged in neighborhoods and police responding and the fire department responding to the discharge of these out in neighborhoods through the year. So yes, that would be something we would look at. But it would be Vince and I having to sit down and review through Home Rule the possibility of looking at that, and some cities are looking at the possibility of doing that. It would be a further discussion.

**Vince Gurrera – City Attorney**

It would be under Home Rule, and part of the problem we have and prior and after 2003 there was a lawsuit filed against the City and it was brought down from Judge Gaughan down in Brooke County. Judge Gaughan made it more than clear that he felt that the laws in the State of West Virginia should be liberalized, not restrictive. I think he even reprimanded our Fire Chief for trying to be restrictive (I think). But also, the issue with that is, if you come from Ohio and you want to buy fireworks that would be legal in Ohio. The law basically said that a person in West Virginia could sell those to an Ohio resident same way with Pennsylvania. That is why they love coming to Three Springs Drive because you have all those things. They are going to have fireworks in their premises that may not be legal under West Virginia Law, but that they

can sell to someone from Ohio in West Virginia, which affects how you are going to restrict them. It makes no sense.

**Mayor Miller**

On the safety side, what I am looking at is these people who sell out of tents now. They are going to be allowed to sell more powerful explosive items. I rather see it in an enclosed concrete building or a structure with adequate sprinkler system. They are going to be doing it from facilities now which are more dangerous. That is what I see the bill going forward.

**Councilman Marsh**

If I may have one last thing for Councilman Connell about the keeping of the records, the legislature in their infinite wisdom, let the Fire Marshall say that 16 years old can buy sparklers, 18 years old and over can buy boomers. God forbid something would happen to a 17 year old that gets his hands on boomers and something happens. I am sure the two Chiefs would like to know how they got it. If that was not in there, I would reconsider that. But this is the same thing they did with the concealed carry on. You can be 18, but you cannot buy a gun until you are 21.

**Councilman Connell**

I still would like to see, we talked about this, and tweaked this a little bit, I do like the idea. I would like to go and find out though, and if we cannot do Home Rule, do not be able to sell the boomers.

**Councilman Marsh**

Are you talking about banning of the sale?

**Councilman Connell**

Yes, banning the sale of boomers. Yes right here in Weirton. West Virginia allows it but can we as the City of Weirton ban the sale of the boomers. Vincent and Travis said they have to check under Home Rule.

**Councilman Ash**

It is my understanding that you can add to but never subtract from.

**Councilman Marsh**

This is the problem with these rules is that they bounce back and forth and I am sure Chief Shumate will back me up on this. They keep going back to FDA 1124 which is more ambiguous than anything I have ever seen. Thought I had seen something in here about it, but I am not going to waste your time looking for it. I will find it. I saw something along those lines.

**Councilman Connell**

Then I recommend we Table it until we get things squared away.

Councilman Connell made a motion to Table and Councilman Ash Second the motion

**Role Call:**

Councilman Ash	<u>Yes</u>
Councilman Weigel	<u>No</u>
Councilman Marsh	<u>No</u>
Councilman Wright	<u>No</u>
Councilman Fracasso	<u>No</u>
Councilman Jackson	<u>No</u>
Councilman Connell	<u>Yes</u>

Table defeated 2/5

**Mayor Miller**

A regular motion to pass the Ordinance all in favor  
Passed 6/1

**NEW BUSINESS:**

**1. Ordinance Allowing for the Sale, Service, Possession and/or Consumption of Alcohol on City of Weirton Property (Councilman Jackson)**

A motion was made by Councilman Wright, second by Councilman Fracasso

**Discussion:**

**Councilman Ash**

We all know that when somebody gets sued they go for the deepest pockets. If we allow alcohol on City property, I do not care what this Ordinance says, we will be sued. No doubt about it I think the defense attorneys should get ready to do it. I am recommending to the defense attorneys to get ready to do it. My question is, they have two or three beers, we leave the City property and have just a little fender bender. How is the police department going to write a ticket for all these people having a fender bender, when they know they just came from City property? They just got off of our property and hit somebody. What is going to happen if they get a little bit more intoxicated and have an accident with their children in the car? We all know if that happens, this City will be sued no matter what this Ordinance says. This City will be called I don't know what kind of word I want to use. I know it is ridiculous that we do something like this. We put the original Ordinance in for a reason. Now, how is the police department going to go over here and arrest somebody that walks out of bar with an open container, but not arrest somebody that walks on City property with an open container. It just doesn't make sense to me. What is the police department going to do? I don't think it is fair to the police department. I don't think it is fair to the residents of Weirton. You all know that I do not drink, there is nothing hidden there, but it does not concern me, but it is going to concern a lot of residents in this town. Who is going to enforce that they do not drink excessively? There

is nobody here that is going to do that. Also, with this license I already checked into it you know I am the Commander of the VFW. I cannot take my license for that facility and brand over here to the City property and sell beer. I cannot do it. I don't know how any of these other amenities are going to do it. They might have some special license that I do not know about, but I know I can't do it. I know my liability insurance will not allow us to do it. We have the million dollar coverage for us. We don't have it to take across the street to the Event Center. So tell me how this is going to work. How is the police department going to enforce open container laws if somebody walks out onto Main Street? Is that any different to you Chief?

**Chief Alexander**

If you are drinking inside the establishment with an open container, obviously we can't do anything about it. If you come outside with an open container, you can and will get arrested.

**Councilman Ash**

If they are in the Event Center, use that for an example, and they come out with a beer in their hand are you going to arrest them if they are walking down Main Street?

**Chief Alexander**

I guess that depends what you guys say. I say yes, but that depends on how this plays out, and what the decisions are. Rules and regulations are attached to that.

**Mayor Miller**

I am like you George, I don't drink any longer. I have a beer license in my establishment. I know the rules. Over the years these thing has been violated. State has an Open Container Law. I remember when Senator Bowman had his retirement party in the Community Center and I happen to walk through the lobby and people were drinking beer and wine. I think I may have asked Terry at the time, how can that happen? Oh, the Governor is here. Well, it should not make any difference if the Governor is here. The rule is the rule on City property. It has happened in Wheeling when they have the Italian Festival. That is when I have noticed it. You can go down within the confined areas outlined by the Italian Festival in Wheeling, and the beer vendors have trailers sitting down on the river bank by the stage. You have a wristband and it is controlled by Police Officers who are on the points of the area that is restricted. They usually are a one day license. Special investigation and consideration, and it is limited to just a few facilities. I would rather have the City have a policy that people can apply for, a one day license, and we know about it, than to have what went on at the Community Center, that I saw, and I thought that was very unfair. The whole echelon of the State of West Virginia violated their own Open Container Law. I know that there are non-profit organizations in this community would like to have a wine and cheese at the Event Center, or cook out and serve some beer. You could not do it and you cannot share licenses. I think that was the premise behind it, that would be limited to a few facilities, the Marland Heights Park, Starvaggi's. I can remember going to Starvaggi's years ago for a family reunion, and people would bring beer and kegs of beer. That was from the Mayor's side of it, that is what I looked at. There was some facilities in the community, limited facilities, with an area that would be pointed out, roped off, that could be monitored by wristbands controlled, and the police would have powers outside of that area. That is my vision of it.

**Councilman Ash**

I noticed in the past, no doubt about it, but I want to state my opposition to it. Based on the fact, I don't want somebody driving after having a few beers on City property. It makes it very, very difficult to enforce something like that. Just like the Chief said, we decide, we just decided that somebody can go out and drink and drive.

**Douglas Jackson**

That is not at all what I have decided. That is not a valid argument.

**Councilman Ash**

It is a valid argument. Somebody is going to get under their wheel after they have had a few drinks at the City property. So that means we have sponsored them to drink and drive.

**Douglas Jackson**

Don't ever put words in my mouth. I as a Councilman did not sit up here and say I was giving anybody permission to drink and drive. Let's get that very clear. Nobody speaks for me except for myself, especially you. I find it offensive and let that stand. Secondly, everybody knows that I was behind this, and sponsored this because I thought this was a great fund raising thing. I want to raise the City out of the ashes and bring it into the 21<sup>st</sup> Century. You go to Pittsburgh to fireworks, festival, and you can have a beer. It doesn't mean that you have to get annihilated drunk. Doesn't mean we are going to allow heroin in the parks next. That is not what I am after at all. I wanted to keep our citizens here, so they don't have to drink and drive and be subject to drunk drivers on the road. I did not give anybody the permission to get annihilated. But I did and I will stand for modernizing our City. I will stand by, but if the Italian Festival wants to have a wine tasting, they should be able to taste wine in our own City and not get arrested. You cannot even have a glass of wine at a wine tasting at the chicken blast and not get arrested or whatever. It is antiquated. And I never, ever, wanted to threaten the safety of any citizen in the City. If anything with the police presence it makes it stronger. I never said that people needed to walk up and down Main Street with open containers. It was limited to three areas; Starvaggi Park, the Event Center, and Marland Heights Park. Those were the three we were going after first. We can broaden it from there. We can shrink it down from there. But the Ordinance is a good Ordinance. It serves a multitude of purposes. It is not so people can get annihilated, and to be drunk, and have a gateway. It is so people can have a great time. We can have social events. We can draw businesses here, have festivals here, have events here. Stop repelling everybody because we over legislate them. I rest.

**Councilman Ash**

First of all, if every time somebody poses something, he states right away they are putting words in his mouth. I wasn't putting words in his mouth, it came out of my mouth about how I feel. So he needs to stop that nonsense. There is no way I am speaking for him, I am speaking for me. This is wrong and I really believe it is going to be hard on the police department. I really believe it is going to be hard on the citizens. I really believe they are going to put their children in those cars and they are going to drive off the City property. Even if it is a fender bender they are going to sue this City because we are sponsoring alcohol consumption.

**Councilman Fracasso**

George, I don't think there is any difference that someone is walking out of a bar. You can say we sponsored that, but we gave a business license to operate to sell alcohol. I don't think it is

any different for the police to be able to monitor the Event Center or Marland Heights or Starvaggi. It is my opinion. I don't think it is any different. It will be monitored. Drinks will be monitored. There are ways around. Everybody will find ways around if they want more. I really do not see anything wrong with this Ordinance myself. I rest there.

### **Councilman Connell**

Right here in the Ordinance it says Part G, the City Council, by resolution, may reverse, modify, alter or amend in whole or part any decision of the city manager and/or mayor made pursuant to this Ordinance as it deems necessary and appropriate. In other words, we have the power to do away with it as well. As we bring it in, if they abuse it, then eliminate it. George, I would like to say, you run the VFW. They are all the veterans. What stops them from going into the VFW and having two, three or four beers and getting in their cars and doing the same thing. That is like saying the VFW the Veterans of Foreign War are sponsoring people to go out and drink and drive, the same with the American Legion, the same with the Moose. If the person is going to do it, they are going to do it. I am not saying the City is sponsoring it we are coming into the 21<sup>st</sup> Century allowing someone to be able too. You are still responsible as a person. It is still you. If you are driving you don't drink or take one beer and that is it. Start shutting them down, we are going to end up like one of these towns in Maryland where they are dry. We won't have anything in here. Everybody will be crossing over the state line.

### **Councilman Ash**

To answer your question, we have TIP Training. We know when to make them stop.

### **Councilman Connell**

Can't we have that here?

### **Councilman Ash**

We could but it is not in the Ordinance.

### **Mayor Miller**

Generally TIP training is when you apply for a license for all employees who serve alcohol. I know we do it.

### **Councilman Weigel**

I have gone round, round, and round with this and have looked at this from all the angles. A lot of concerns that you have expressed, I have talked with a couple different attorneys. You are right. They will go after deep pockets. They will try, they will definitely try, and I hate to see that. When the Park Board met last week, they discussed this. Park Board has no objection to it. That is the Park Board stance. I kept looking at it, going round and round and I thought, what is the benefit of this? I came to some conclusion with that. Yes, there could be some good ways to raise funds like this. But I think about Change Incorporated and their St. Patrick's Day. They found a way to do just this in a current consistence venue. They go and have their thing up at Mountaineer where there can be alcohol served. A group like that would be trying to raise money, couldn't they go to one of the benevolent organizations and say hey, could we do this fund raising event here. That gives them the afternoon to do it. The issues about the addiction problems that we have are huge. They are huge in this valley. I coached football up at Weir High for years and years, and breaks my heart to see how many of those kids that I thought are fine young men that became an addict. Whether it be, alcohol or drugs,

we have enough places in town where they go and have a drink. As far as listening to a band and having couple beers, I can check the site. We have other clubs in town that do that and do those types of things too. I am not seeing the big benefit allowing this on City property. That is all I have.

**Mayor Miller**

A motion has been made and seconded all in favor  
Passed 5/2

**PRAYER**

**ADJOURNMENT**

Mayor Miller called for a motion to adjourn the meeting after the closing prayer which was recited by Councilman Connell.

Motion was made by Councilman Wright, second by Councilman Fracasso.

The motion passed, 7/0.