

MINUTES OF THE LAFAYETTE COMMON COUNCIL  
June 5, 2023  
REGULAR MEETING

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The Common Council of the City of Lafayette, Indiana met in regular session Monday, June 5, 2023, at 6:00 pm. In the Common Council Chamber at 20. N 6<sup>th</sup> Street.

President Ahlersmeyer called the meeting to order at 6:00 pm.

The Pledge of Allegiance led was given to the flag of our Country.

Present: Klinker, Nargi, Snyder, Reynolds, Hession Weiss, Brown, Weast-Williamson, Downing and Brown.

City Clerk Cindy Murray and City Attorney Jacque Chosnek were present.

Councilmember Klinker moved to recess for a public hearing on Ordinance 2023-23 (An Ordinance of the Common Council of Lafayette, Indiana Annexing Certain Territory into the City of Lafayette, Indiana Annexing Certain Territory into the City of Lafayette, Indiana 2023 Lafayette Southeast Voluntary Annexation Carr Family Farm II) Councilmember Nargi seconded.

Kevin Riley, attorney for the petitioner pointed out that the Petitioner is the owner of all the land included in the annexation request. Also, the request meets all requirements of State Statute for annexation when the time is appropriate.

Cassandra Nielsen attorney with Stoll Keenon Ogdon representing the town of Dayton requested the letter sent to Ms. Chosnek, City Attorney be entered into the minutes. Ms. Nielsen highlighted several items from the letter inserted below:

*I am writing on behalf of our client, the Town of Dayton, as a follow up to our conversation of last week and in advance of the public hearing for Ordinance 2023-23 scheduled for Monday, June 5. I ask that this letter be read into and made a part of the record of the public hearing. I am attaching my prior letters relating to the proposed annexation as well as a prior letter to the City directly from the Dayton Town Council, which I would also like to be made a part of the record. The Town of Dayton also asks that previous in-person comments made by Town representatives and others, including me, on behalf of the Town be made a part of the record for the upcoming public hearing. In past communications, the Town has gone to great lengths to explain the numerous reasons why the Town objects to this annexation and why the Town has implored the City Council not to approve it. In this letter, I do not intend to reiterate those reasons or again discuss the long-term damage this annexation will cause to the Town. Instead, I intend to focus on legal issues, issues that will need to be resolved by a court of law if the City moves forward with this annexation.*

*First, I will again direct your attention to the existing water and sewer contracts between the Town of Dayton and the City of Lafayette. These contracts define and fix the Town of Dayton utility jurisdiction for water and wastewater service as “the area bounded by County Road 200 South on the north to County Road 800 East and then south along the south fork of Wildcat Creek on the east to Wyandotte Road on the south and to Interstate 65 on the west.” See the Municipal Wastewater Service Agreement, Third Addendum, dated*

*February 13, 1995, and the Water Agreement dated February 13, 1995. By these agreements, the City agreed that it would have jurisdiction and responsibility up to the point of service, and the Town of Dayton would jurisdiction and responsibility beyond the point of service in this expressly defined area. The property that is proposed to be annexed lies entirely within Dayton's water and wastewater service jurisdiction. However, the City's adoption of the proposed annexation will unilaterally remove the subject property from the Town's jurisdiction. Under Indiana law, a municipality has exclusive jurisdiction over the water and sewers within its corporate boundaries. See IC 36-1-3-9;*

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*Town of Plainfield v. Town of Avon, 757 N.E.2d 705, 711 (Ind. App, 2001). Thus, the very act of annexing property will divest the Town of its utility jurisdiction, violating the contracts and rendering them meaningless and thereby causing incalculable and irreparable harm to the Town of Dayton. The City's intent in this regard is confirmed by its own fiscal plan, in which the City commits to provide utilities to the property.*

*Second, there are certain procedural and statutory defects that in our opinion will render this annexation ordinance invalid. This annexation is proceeding as a "super-voluntary annexation" under IC 36-4-3-5.1, despite there being one parcel included, owned the State of Indiana, for which there is no signature. We mentioned this in connection with the previously filed and later abandoned annexation petition, but it has not been corrected with the present petition. In addition, the public hearing is being held more than thirty days after the filing of the annexation petition in violation of IC 36-4-3-5.1(e). By the very words of the statute, the City must hold its public hearing "no later than" thirty days after the filing of the petition. In our opinion, any public hearing after the expiration of the thirty days would be invalid and the ordinance, if adopted in reliance on the public hearing, would also be invalid.*

*For all the reasons discussed to this date, the Town of Dayton continues to ask the City Council not to approve the annexation ordinance. That said, the Town cannot stand by while its rights and its interests are ignored and discarded. If the City approves the annexation, the Town will have no choice but to seek intervention of the courts for a determination of each party's rights with respect to the property being annexed and the remainder of the Town's utility jurisdiction, to set aside the annexation ordinance, and to recover damages caused by the City's breach of the sewer and water contracts.*

*Please feel free to contact me if you have any questions or wish to discuss this further.*

Mark Buhrmester, President Dayton Redevelopment Commission. 264 Washington St., Dayton, In spoke in opposition to the annexation.

The Clerks read the following statement into the record:

*I am writing this email to express my support for the voluntary annexation of the property mentioned in Ordinance 2023-23. The Carr family has made commendable efforts to collaborate with the Dayton Town Council members throughout this process. I feel it is important to disclose that I served as an elected member of the council in the previous decade. Additionally, Yost Drive, which is relevant to this discussion, is named after Kenneth Yost, whose brother, Robert, was married to my mother for the last forty years of her life.*

*There are numerous references to the Indiana Code and agreements that were established several decades ago. As a resident of Dayton for over 35 years, it is evident to me that the planned tax increment financing district was intended to be a valuable financial tool for the northern area of the town. However, the current town board has chosen to discontinue this initiative. It is regrettable that the town will now face financial difficulties due to poor decisions and the incurrence of legal fees from outside the county.*

*There exists an infrastructure agreement that encompasses the area bordered by County Road 200 South to the north, County Road 800 East to the east, the south fork of Wildcat Creek to the south, and Wyandotte Road to the west, extending to Interstate 65. While this agreement may not be recognized or supported by property owners in the mentioned area who are not within the Town of Dayton, it is crucial for the town's progress.*

*The Carr Family has made continuous efforts for several months to establish an annexation agreement with the Town of Dayton. Unfortunately, it appears that the council does not fully comprehend the importance of modern economic development initiatives. Therefore, I kindly request that you approve the voluntary annexation, as it would be a significant step forward for the town. Thank you for your attention to this matter. Regards, Dave Leininger 764 Shady Ln, Dayton, In 47941*

Councilmember Hession Weiss moved to approve the minutes of the May 1, 2023, meeting.  
Councilmember Brown seconded. Motion passed by unanimous voice vote.

There were no Disposal of Claims, Petitions or Communications:

The Clerk stated the following reports are available in the City Clerk's Office:

Renew Department Monthly-March and April  
Water Works Department Monthly-March and April  
Fleet Maintenance Department Monthly-March and April

### **Ordinances for Second Reading:**

The Clerk read Ordinance 2023-22 (An Ordinance Amending Sections of Chapter 7 City of Lafayette Motor Vehicle and Traffic Control) by title only on second and final reading. Councilmember Weast-Williamson moved for passage, Councilmember Downing seconded. Jacque Chosnek, City Attorney

spoke regarding the changes to this ordinance. Ordinance 2023-22 passed 8-0 on a roll call vote on second and reading.

**Ordinances for first reading:**

The Clerk read Ordinance 24 (An Ordinance to Amend the Zoning Ordinance of Tippecanoe County, Indiana, to Rezone Certain Real Estate from GB to PDRS-East Side of Park East Blvd.-Van Rooy Properties, Inc., Petitioner) by title only on first and final reading. Councilmember Klinker moved for passage, Councilmember Nargi seconded. Kevin Riley, attorney for the petitioner spoke regarding the ordinance. Mr. Riley noted this request is for 312-unit multifamily apartments. Ordinance 2023-24 passed 8-0 on a roll call vote on first and final reading.

**Resolutions:**

The Clerk read Resolution 2023-17 (A Resolution Establishing A Fiscal Plan for the Annexation of Certain Territory into the City of Lafayette, Indiana 2023 Lafayette Southeast Voluntary Annexation Carr Property. Councilmember Snyder moved for passage; Councilmember Reynolds seconded. Jacque Chosnek, City Attorney spoke regarding the resolution. Resolution 2023-17 passed 8-0 on a roll call vote on first and final reading.

The Clerk read Resolution 2023-18 (A Resolution of the Lafayette Common Council Annual Tax Abatement Compliance) by title only on first and final reading. Councilmember Hession Weiss moved for passage, Councilmember Brown seconded. Resolution 2023-18 passed 8-0 on a roll call vote on first and final reading. Dennis Carson, Director of Economic Development noted that all companies were vetted by the Redevelopment Commission and found to be in substantial compliance. Pearl Speakman, 923 S 22<sup>nd</sup> St. questioned if the tax abatements were available for review by citizens. President Ahlersmeyer informed Mr. Speakman all reports can be obtained at the City Clerk's Office with a public records request. Resolution 2023-18 passed 8-0 on a roll call vote on first and final reading.

The Clerk read Resolution 2023-19 (A Resolution Declaring the Designation of Certain Real Estate as an Economic Revitalization Area (ERA) and Approving the Application for Property Tax Abatement-Kentland Bank, Real Estate.) by title only on first and final reading. Councilmember Weast-Williamson moved for passage, Councilmember Downing seconded. Dennis, Carson, Director of Economic Development noted this abatement is for an affordable senior housing project. The project is being developed by Area IV Agency and Keller Development. Dawn Galloway, Keller Development gave an overview of the project including 50-unit affordable housing for low-income seniors. Units will be a mix of 2-unit and multiplex duplexes with garage. Resolution 2023-19 passed 8-0 on a roll call vote on first and final reading.

No Reports of Standing Committees.

No Reports of Special Committees.

Report by the Mayor:

Mayor Roswarski recognized Richard Doyle, Fire Chief on his last council meeting. The Chief will be retiring after 11 years as chief and 39 ½ years on the department.

Chief Doyle presented Deputy Chief Steve Butram a plaque similar the plaque on each fire truck with a listing of all the fire trucks and units built and purchased for the department since 2013.

No Miscellaneous or New Business

No Reports by the Council.

Public Comment:

Pearl Speakman, 923 S 22<sup>nd</sup> St praised the Fire Department. Mr. Speakman also expressed concern regarding a new homeless shelter.

Kate Cornell, 1616 N 16<sup>th</sup> St. spoke regarding an issue with the legal system.

Debbie Adams, 19 Poland Hill Place expressed concerns about pedestrian traffic and safety in the Poland Hill area.

Mary Faulkner, 2204 N 22<sup>nd</sup> St. wanted to bring awareness to the humane society's practice of adopting pets with previous behavior issues.

Trent Richter, President local 472, Lafayette Fire Department invited council members to attend, a Fire Ops 101 training session in the fall,

Monica Casanova, Fairfield Township Trustee presented the 1<sup>st</sup> quarter report for Fairfield Township.

Councilmember Klinker move to adjourn. Councilmember Nargi seconded. Meeting adjourned at 6:57 PM.

Minutes prepared by Cindy Murray, City Clerk

Complete audio of meeting available in the City Clerk's office or at [www.lafayette.in.gov](http://www.lafayette.in.gov)