

Honorable Council
City of Newark, Ohio
July 15, 2014

There was a meeting of the Service Committee in Council Chambers on Monday July 14, 2014, immediately following the Finance Committee. These members were present:

Bill Cost Jr.	Ryan Bubb
Jeff Rath	Alex Rolletta
Jeremy Blake	

We wish to Report:

1. **Ordinance 14-20** amending chapter 1860: solid waste collection and disposal of the codified ordinances of the City of Newark was considered.

Director Rhodes- I think that a couple of us should speak, Councilman Blake first brought this to my attention and the Law Directors' attention. The three of us had very good dialogue on this and we had a lot of questions and answers but I think that the best way to frame it up would be to have the Law Director come up and frame it up and then Jeremy and I would be able to answer any questions that somebody might have. I would just like to say publicly, thanks Jeremy for working with us on this.

Mr. Blake- thank you

Law Director- in the interest of time I am going to take what appears to be a large piece of legislation and break it down into a few bullet points to make it a little easier to digest. The changes that are in here are all capitalized. You will see they are all additions, there are a few deletions. There are only deletions because what is capitalized there is a substitute for an existing provision of the ordinance. There are a few housekeeping and clarification provisions that are in there that really aren't major issues for debate. There are a couple of changes in the definition section to add definitions for the word curbside and the word recyclable because of provisions later in there.

There is currently a provision in the Codified Ordinances that all trash hauling vehicles will be inspected annually by the Newark Police Department. Years ago that was a feasible option when they had in house mechanics that did the work on their own vehicles and had a garage there at NPD. That is no longer feasible from a funding or a staffing stand point. To clean that up we have included a provision for self-inspection which is part of the license application process. Each trash hauler will provide proof of inspection from a certified mechanic to show the major functioning portions of that vehicle are in a safe and working condition and that will be submitted to the Safety Director as part of the application process. Also as a part of that application process is a new provision with regard to showing proof of the

availability to the client of optional recycling services. That was actually a provision that was left over from a previous group of Council members who had met with me over some length to address some of these issues. It never came to fruition. I kind of quite honestly just left this in here during my conversations with Mr. Blake and Mr. Rhodes and that is throughout this implementation process of this ordinance and the enforcement of this ordinance that it would probably be in the 2015 licensing process which most companies would show that they have optional recyclable collection services available.

A housekeeping clarification that was made was with regard to the provision for insurance. You will see there is imposed a mandate that the companies show a minimum coverage of insurance and the minimum insurance in that statute is \$300,000.00, \$500,000.00 and quite frankly those are numbers that I came up with because they somewhat approximate those that are used by the standard responsible motorist. I have also consulted with a highly regarded expert in the insurance industry who has indicated to me as the result of the nature of their business and the product they haul they have additional insurance requirements from an EPA stand point that far exceeds these amounts. If you are concerned that we are putting this additional burden of insurance on the trash companies it is highly likely that they already have far more insurance already. We are just trying to bring our ordinance out of the Stone Age to reflect a more modern financial framework that these companies should be operating in. One other issue that is in there is a fairly minor issue but our current ordinance is silent on this and I know that Mrs. Floyd at some point and time may be making a minor modification to this provision as well and again this is left over from a previous group on Council that addressed this issue also. It is with regard to the window of opportunity for a homeowner or a property owner's bin to be curbside. As the proposal reads, that as much as is practical able, that bin will be out no sooner than 7 P.M. the night before pick up and will be removed off of the curbside by 11 P.M. the day of pick up. I think Mrs. Floyd wants to maybe change that to 5 P.M. to 11 P.M. I suggested to Mrs. Floyd and I will suggest to the members of the committee that if there are going to be tweaks perhaps we should wait until this comes to Council, put them all together and do the amendments that we need to make on the floor of Council as opposed to the hit or miss here at Committee. I think Mrs. Floyd wants to change that of 5 P.M. the day before to 11 P.M. the day of so that we don't have people storing their bins curbside 24-7. Those are minor issues and subject to debate obviously but they are not the principal gist of this legislation. The principal gist of the legislation is a whole new section you will find in there 1860.041. If you look at 1860.04 it says anyone who is an owner, landlord or tenant will properly dispose of their solid waste. It doesn't say how or when. 1860.041 has been added to this section to clarify that. It will say because you are already obligated to dispose of your solid waste we are going to impose upon you an obligation that you have a contract with a solid waste collection company a trash hauler for the collection of that solid waste and upon request of the Safety Director you will show proof of that contract. I don't have a contract with my trash hauler but I get a bill every 30 days and I pay that bill and if I got that

request from the Safety Director I would come in and show him my bill and my cancelled check and that would be proof that I have trash hauling services at my residence. 1860.041 is essentially doing that. Either the property owner, the landlord or tenant will contract with a licensed trash hauling service not. That is the principal purpose of that provision. It applies to only 4 residential units or less. The reason for that is because units that are 5 or more in the solid waste ordinance now are covered under the commercial provision and are already have the mandate regarding the contract of services and the type on a much different scale.

The other major provision that was added in here is kind of hard to describe other than to say that if at any point and time the owner, tenant or landlord breeches that contract, fails to pay for that trash hauling service then as a result relieves that trash hauling company of their obligation to come pick up the trash as it currently stands right now that is it the bin stays there nothing happens. This provision is added to say if that happens then the trash hauling company will make one last pick up at that house to gather all the solid waste that has accumulated and remove the bin from that location. The purpose there being, psychologically that bin is a magnet for solid waste even if it is full. People think that there is a bin it will eventually get picked up I will just set my trash bag next to it and they will get to it when they get to it which when there is a breach doesn't happen. It also highlights that here is a qualifying place of residence that ought to have a bin but doesn't possibly causes us to ask why not.

Mr. Blake- I would just like to thank the Law Director and Director Rhodes for meeting with me on a few different occasions. I will echo that it was a very good discussion about trash hauling in our City. It is a concern in our City that came up when you go around talking to neighbors about trash hauling service. It is an issue in our neighborhoods so I appreciate their joint cooperation on presenting the legislation tonight and whatever discussion that will occur after this tonight. I just want to concur that the message that we want to have is that in the City of Newark we want people to have trash service. People should be responsible for their waste and should be able to contract to have that removed properly. I did want to address an issue that came up regarding the recyclables. I had a conversation with Damion Shackelford; he is as many of you know one of our smaller trash haulers. Right now he does not provide recycling as one of his services but if we adopt this it will become an option that those trash haulers will have to provide. He did say that when I spoke to him this evening that within a reasonable amount of time he will be able to provide recycling as an option to his customers. I just wanted to mention that in case it was a concern of any of his customers.

Motion by Mr. Bubb, second by Mr. Rath to send to full Council

Mrs. Floyd- I have read over this a number of times and the more that I look this, it is on the fourth page 1860.03 number 9 :

9) TO THE EXTENT PRACTICABLE, EACH CONTAINER SHALL BE PLACED AT CURBSIDE NO SOONER THAN 7:00 PM THE DAY BEFORE THE SCHEDULED COLLECTION AND

SHALL BE REMOVED FROM CURBSIDE AS SOON AS PRACTICABLE OR BEFORE 11:00 PM OF THE DAY OF COLLECTION.

I would just like to when this comes to Council make that say 5:00 PM on the day before just because in the winter time it is dark by 7:00 PM. I will be making a motion for that amendment when it comes to full Council.

Mr. Rath- I had a question about the trash hauler coming to pick up the bin after the contract is severed due to lack of payment but do we have any provisions about picking up the bins when the contract is voluntarily severed? For instance if I am living in an apartment but I call my trash hauling company and tell them I don't need their services any longer because I am moving. That apartment could sit open for a month or two with the bin sitting there and as you said they become magnets do we have any provisions about them picking the bin up.

Law Director- the language does currently say not paid made payment for such services that could be changed. He stated verbiage saying or if the contract has been terminated for any other reason could be included.

Mr. Rath- do we want to change that? This is why I ask that, the trash hauling company could come out and retrieve the bin then a week later someone moves in and they have to bring a bin right back out there.

Mr. Marmie- it's not a current requirement that somebody have a bin from the trash hauler, I can use my own bin not provided by the trash hauler.

Mr. Cost- I know that I have changed haulers before and had to make a half dozen calls to the company to get them to pick up their bin and therefore had two bins sitting out there for people to throw their trash in. If in deed the bin is picked up after nonpayment and the trash starts to pile up that would then be a Property Maintenance issue?

Law Director- that is correct, that was discussed at great length amongst the three of us. Essentially this provision was designed to recognize that the Property Maintenance Code addresses this problem of collecting and then blowing debris at the end of the pipe line. If there is some way that we can forestall that problem here at the beginning of the pipeline so it doesn't become a Property Maintenance issue in the first place and that is what this provision for mandating the contract and also the provision for the removal of the bin. Mr. Marmie is correct there isn't a mandate in this provision that the trash hauler provide a bin. I can provide my own bin but there are provisions as to what the bin has to look like. In response to the concern Mr. Marmie that you raise if we get to this point obviously the trash hauler doesn't have an obligation to remove the bin. Our concern for that magnet, the physiological magnet for the trash has not been elevated but I'm not sure how we draft a provision to adjust that in fact I don't think there is a way to do it. Mr. Rath with regard to your proposal we could put that change in there fairly easily if people on Council wish for us to do that. It makes sense that if the contract is breached or terminated for any reason friendly or unfriendly the problem remains the same and the bin should be picked up and I will draft some proposed language for that as well.

Mr. Rath- I am not sure that we want to do that. For one it puts a burden on the trash company and two I think that it takes away a market edge for the company.

Law Director- I will give you guys the language to argue about.

Mr. Marmie- I appreciate what Director Sassen has done as far as putting the language together. I think that we may want to talk to a couple of the haulers because 7 days after payment has not been made most of them go longer than that and continue to pick up even a couple of weeks without payment especially when it is a 90 day billing period they are billing for. Or word it in a fashion that states 7 days after they terminate their services.

Law Director- my intention with this language was where it says the refuse hauler is thereby relieved of their obligation of performance, that is not 7 days after the bill was due that is 7 days after the trash hauler has made a business decision to no longer pick the trash up. What they have been doing is just not coming back. What we are asking them to do is after they make that business decision to no longer pick that trash up to within 7 days of that decision come back and make that last pick up.

Mr. Cost- when they come to do that final pick up are you assuming that they are not only going to pick up everything that is in the bin but everything around the bin?

Law Director- I am and I know that Mr. Blake and Mr. Rhodes have had pretty extensive conversations with the trash hauling companies and I have as a result of a two year process that we had on this particular issue. That is a fairly safe bet with the haulers we have here.

Mr. Blake- I would agree with that. What we need to keep in mind is that the enforcement of this is going to be complaint driven. When we receive a complaint that is when enforcement will kick in.

Mr. Rath- what is the penalty if someone puts there bin out prior to the 7 PM the day before or doesn't bring it in by 11 PM the day of pick up? I would also like to hear from Director Spurgeon to know if our Property Maintenance Code is affected at all by this.

Law Director- this may highlight an oversight on my part. You can look at the penalty section 1860.99 which breaks down a variety of different sections that if violated will result in the following. In 1860.99 a) it states that whoever violates or fails to comply with Section 1860.03 a) or (b) and that is a portion of 1860.03 a) is guilty of a minor misdemeanor and shall be fined not more than one hundred dollars (\$100.00).

Director Spurgeon- to answer Mr. Rath's question. We do have a significant challenge in the community with approved receptacles. It is a common practice to put the dumpster out and a bunch of stuff around it. If we get a compliant we are going to tag that. The dumpster in and of its self is an approved receptacle however the trash on the ground is not. They have 48 hours to remove that and if they don't then we are going to go out and take that material and dispose of it and then we are going to with Council's approval assess them a \$250.00 fine. Fine is not the proper word, a cost recovery action.

Mr. Rath- is that the only effect that the changes in this ordinance has on your Property Maintenance Code?

Director Spurgeon- if the expectation of the legislative body is we get into the business of moving bins back where they belong then there will have to be some kind of cost recovery down the road because I can't use very limited resources as

they are to move bins back to where they belong. Then we also have to prosecute them and I am guessing our Director of Law has other business to attend to.

Mr. Rath- I don't know where I saw anywhere in here that it said we had to move it. My question was what happens if they don't and the answer to that question was a \$100.00 fine.

Director Spurgeon- from a Property Maintenance perspective in the executive branch of government I don't have the authority to prosecute that so to recover that fine I will let Director Sassen correct me if I am wrong, take some kind of action through the judiciary. I am saying that if we have a complaint and we are asked to help, ok but what can we do? I can send somebody out to move the dumpster back where it belongs under this ordinance but if I get into the business of that, sending Joe and George out every time I turn around I think we need to consider as a community what is a reasonable...just like trash we can prosecute trash but the more effective thing for me to do is ask Council to shorten the time and to allow me to assess a cost recovery. That modifies a behavior I believe more effectively than can I have a judge hear something of that nature.

Law Director- I don't think that it is anybody's objective to criminalize anyone's behavior. I think the major provisions were simply to impose obligations on trash haulers and the property owners or tenants to address this accumulating trash problem at the beginning of the pipeline rather than at the end. This particular issue with regard to the timing of the bin going to and from the curb is kind of an ancillary issue. I am also aware of the problem that you have sometimes with unanticipated consequences. One of which may be the criminalization of leaving your bin curbside for too long which was clearly no one's intent and I can tell you that there is not a whole lot of desire on the part of my office to prosecute those cases and I can guarantee you that there won't be a whole lot of interest on the part of the judges to hear those cases. I think that it is a valuable provision in here for nothing else than an educational stand point so that if that becomes problematic then a representative of the City can go to that offending location and say did you know that we had an ordinance here and if it isn't complied with there is a potential penalty. I see this as more of an educational than it will be as an enforcer. It is there as an enforcement but trust me we are not chomping at the bit to take those cases to court.

Mr. Guthrie- just a couple of things that I wanted to throw out as thoughts as much as anything. First I want to compliment the folks involved in this I think there has been some head way and anytime that there is headway in this area it is a good thing. I have been an advocate for, I have said this before, and I am an advocate for the responsibility of the trash removal being placed right on the owner of the property. Mrs. Floyd had indicated earlier on that she had some thoughts in support of that idea too and of course this doesn't go that far. It does clarify responsibility. There are some concerns that I have because it seems to me and I may completely misunderstand but it seems to me that it can simply be written in the lease that it is the responsibility of the tenant and I am sure that is already in leases. It seems then that the landlord could wash their hands of that responsibility. I would like to see

those responsibilities stay with landlords. I don't think that there is uniform support for that but I wanted to share my opinion on that. When I think about the penalty and the responsibility of the contract I don't think that I am the only one in the room that knows this, we have a lot of folks and it is generally people who are living on fixed incomes are sharing pick up. The ones I know that are doing it are senior citizens. I don't know how that situation plays into it. I think that there are some really good foundations here but I am not sure that we are ready to go to the next step but that all hinges on what the majority of Council thinks. I am in favor of one trash hauler taking one section of the city and a different trash hauler take another section so we can get some of these multi ton trucks off of our residential streets instead of having 4 or 5 trucks on our residential streets. I do have people tell me that there is support for that and when you compare our rates in the City of Newark with communities that have done it such as Etna Township, Granville Township and several other townships and it blows me away the townships where people are further apart than people in our city are paying less for trash removal service than our citizens are. Step in the right direction I hope that we can seriously look at some of these other issues down the pipe because I think quite honestly they are in the interest of our citizens.

Law Director- I just wanted to address a concern Mr. Guthrie mentioned which was bin sharing. I don't really think that will manifest itself as a problem for two reasons. One, this will be a complaint driven ordinance and assuming the two folks living next door sharing the same bin don't allow the trash to overflow and it is being picked up that is a question that is never going to be asked. The issue of proof of contract is a fairly flexible concept of proof of contract and I left this flexible on purpose so that if two folks are sharing the bin and for whatever reason a complaint was filed and they came into the Service Director's office who would then I'm sure would consult with me at the time about whether it is ok for the two people to split the bill and I would say yes because this home has a contractual relationship shared or not and it is working. It only becomes an issue if it's not working.

Mr. Rath- I will echo what Mr. Guthrie said. I have had complaints about rates. In fact just a week ago a man came knocking on my door complaining about rates. What was interesting was he gave me price quotes of four different people on the same street all from the same company. He was looking for there to be something we could do to address that. I know this ordinance is not going to address that at all but I just wanted to let you know that there are people out there concerned about that as well.

Mr. Blake- when I first got on Council this trash issue that we have in our City; actually it was neighborhood appearance is what fueled my fire. We have talked about the number of totes out there the number of companies and things like that but I think this is a good step. I know that Council has previously gone through a discussion of single hauler bidding and dividing the city into maps and the language was not there to create that and get it passed but it is something to consider. I think that this is a good piece. I worked with the administration on it and I think it is a

good piece to move on to full Council for consideration. I want to thank Director Rhodes and the Law Director for their time and partnership on this.

Mrs. Floyd- I agree with some of the things that Mr. Guthrie said but I also agree with the things that Mr. Blake just said. This is like most government it's a compromise. It is a first step. Trash has been discussed many times in Newark and it is a complicated issue and people have very strong feelings about one thing or another. I think that it is a good start and we need to move it on to full Council.

Motion passed by a vote of 5-0.

Mr. Rath- it would be nice if we could maybe hear from some of the trash haulers at the next Council meeting or the reading. Just to get their opinions.

Chair, Bill Cost Jr