



**Florence City Council
Special Meeting
Tuesday, October 4, 2022
6:00 p.m.**

MINUTES

The City Council of the City of Florence, Kentucky, met in special session on Tuesday, October 4, 2022 at 6:00 p.m. at the Florence Government Center, 8100 Ewing Boulevard, Florence, Kentucky, with Mayor Diane E. Whalen presiding as chair.

CALL TO ORDER & WELCOME:

Mayor Diane E. Whalen called the special meeting to order and declared the meeting open for the presentation of items on the special meeting agenda.

ROLL CALL:

The roll was called, and the following six (6) members of council were registered present: Dr. Julie Aubuchon (Vice-Mayor), Mel Carroll, J. Kelly Huff, David Osborne, Patricia Wingo, and Gary Winn.

Staff members present were: Assistant City Attorney, Thomas Nienaber; CFO/HR, Linda Chapman; Fire/EMS Chief, Rodney Wren; Chief of Police, Tom Grau; Public Services Director, Eric Hall; Business & Community Development Director, Joshua J. Hunt; City Clerk, Melissa Kramer; and Police Lieutenant, Nathan Rettig.

The following were also present in the audience: Ryan Kilmer, Florence Police Department new police officer; Family and Friends of the new Florence Police Department Employee Ryan Kilmer; Finance Supervisor, Ashley Schilffarth; Police Captain, Eric Bowles; CitiMark Representative, Robert Poole; Resident of Florence, Jonathan Sterling; Resident of Florence, Aaron Gillum; and Resident of Florence, Thomas Judd.

APPROVAL OF MINUTES:

Mayor Whalen called for a motion to approve the minutes of the September 27, 2022, business meeting. Councilmember Winn motioned to approve the minutes with a second from Councilmember Aubuchon. **All councilmembers present voted aye.**

OATH OF OFFICE:

Tom Grau, Chief of Police, introduced Ryan Kilmer, as the newest member of the Florence Police Department. Chief Grau stated Ryan is twenty-two years old and currently resides in the City of Florence and grew up on Heritage Drive. He is a 2018 graduate of Dixie Heights High School. Ryan has a Bachelor of Science Degree from Eastern Kentucky University in Homeland Security

with a concentration in Intelligence Studies. He also obtained a minor degree in Fire, Arson and Explosion Studies. Chief Grau stated they are excited to be adding Ryan to the department and he leaves for the academy on Sunday, October 16, 2022.

Mayor Whalen administered the oath of office and welcomed Ryan to the City of Florence.

OCCUPATIONAL LICENSE DENIAL APPEAL HEARING:

Mayor Whalen called upon Assistant City Attorney, Thomas Nienaber, and Robert Poole, for presentation of the Occupational License Denial Appeal Hearing. Mayor Whalen announced the Occupational License Appeal Hearing for Robert Poole d/b/a Citimark Properties, LLC d/b/a assumed name Citimark Services, LLC. Mayor Whalen advised councilmembers were provided copies of the Occupational License Application, the letter of denial, the letter of appeal, and the notice of hearing. Mayor Whalen explained Council would hear the presentation by the Appellant, then a presentation by the city, followed by brief arguments by counsel for the city and counsel for the Appellant. All witnesses will be sworn in and may be cross-examined.

Mayor Whalen swore in the Appellant, Robert Poole. Mr. Poole stated his argument is laid out in his appeal. Mr. Poole clarified Question 18 identified in his appeal should have been identified as Question 19. When he completed the Application for an Occupational License, he stated Question 19 asked, "Have you been convicted of a felony or a misdemeanor?" Mr. Poole stated he answered yes and did not attach further explanation. He received notice from the Finance Department his occupational license was denied for providing false and untruthful information. Mr. Poole objects to the statement as he believes he did not provide any false or untruthful information.

Mr. Poole stated, "The question was answered in a truthful manner. There is nothing false or untruthful, so I don't believe those to be grounds for a denial of my occupational license. Additionally, under the city ordinance, there is a requirement if a person previously convicted, the city coordinator shall determine if the conviction directly relates to the business for which the license is sought. I explained my conviction in my notice of appeal and it does not have anything to do with the nature of my business which is consulting and paralegal services. The LLC that I have, has been in existence for sixteen years or so and I have transitioned into a services, consulting services, previously was a property holding company for some real estate that I held. In addition to the city ordinance, there is also a statute, and I spelled that KRS 335B.030, which says that, I can read you a little summary here, it says that until 2017, many applicants with convictions were barred from receiving occupational licenses preventing many of them from finding good jobs and trained professions and then the Kentucky legislature changed all of this in 2017 by amending and repealing parts of KRS 335B, the section that deals with occupational licenses which allowed licensing authorities to deny licenses against persons without good moral character. That statute was repealed completely and was amended so that hiring or licensing authority shall not disqualify an individual from pursuing or practicing or engaging in any occupational licenses for which a license is required solely because of an individual's prior conviction or crime. So, my argument is, there is no relationship at all to the type of business that I want to operate. The law basically requests that there be some connection. So, if you have a financial broker who defrauds his clients, that would be directly connected to his type of business. You have a corporation that is dumping chemicals and they are convicted criminally, that is the type of conviction directly related to the

business. So I mean at some rate, I answered truthfully, there is nothing untruthful about the application. The Finance Department apparently did acknowledge that I answered yes and looked my record up, so they had the information in front of them. I additionally provided more information here in my Notice of Appeal as to what my conviction was all about. So there is no untruthful information and the type of conviction I had. There is no relation to the type of business, so I would request that my occupational license be granted. Thank you.”

Mr. Nienaber questioned Mr. Poole whether he intended to offer any additional testimony. Mr. Poole answered no and concluded his case.

Mr. Nienaber provided councilmembers and Mr. Poole with a packet of Exhibits to be entered into the record:

- Exhibit 1 - Citimark Properties, LLC Articles of Incorporation
- Exhibit 2 - Kentucky Bar Association Suspension Notice
- Exhibit 3 - Ohio Bar Association Suspension Notice
- Exhibit 4 - KRS 542.130; KRS 529.010; KRS 529.100; KRS 529.110
- Exhibit 5 - Supreme Court Rules – SCR 3.020; SCR 3.460; SCR 3.470; SCR 3.130(5.5)
- Exhibit 6 - Moral Turpitude Definition
- Exhibit 7 - Citimark Properties, LLC Application
- Exhibit 8 - August 29, 2022 Denial of Occupational License
- Exhibit 9 - Statement of Appeal
- Exhibit 10 - 21-CR-0035, Boone County Circuit Court Record
- Exhibit 11 - 18-CR-01529, Kenton County Circuit Court Record

Mr. Nienaber questioned Mr. Poole:

Mr. Nienaber: The Exhibits I want to introduce here this evening are your Articles of Incorporation filed with the Secretary of State, can we stipulate to that?

Mr. Poole: Yes.

Mr. Nienaber: The Kentucky Bar Suspension Notice, can we stipulate to that?

Mr. Poole: Which exhibit number is that?

Mr. Nienaber: Number 2. I’ve got a list of them.

Mr. Poole: I’m not applying to practice law.

Mr. Nienaber: I understand. Number 3 is the Ohio Bar Association Suspension Notice?

Mr. Poole: Yes.

Mr. Nienaber: Number 4 are the identified KRS Criminal Statutes. Number 5 are the Supreme Court Rules. Number 6 is a definition of Moral Turpitude. Number 7 is a copy of your application. Number 8 is the denial notice. Number 9 is your statement of appeal. Number 10 is the Boone Circuit Clerk’s records regarding criminal charges in Case #21-CR-0035, will you stipulate to that?

Mr. Poole: Which number is that?

Mr. Nienaber: 10.

Mr. Poole: It appears to be.

Mr. Nienaber: And then Number 11 is the Kenton Circuit Clerk’s records relating to criminal charges in 18-CR-01529.

Mr. Poole: It appears to be.

Mr. Nienaber: Now, Mr. Poole you stated that your application was denied because you provided false information. That is not exactly what your denial letters says is it?

Mr. Poole: Actually it is.

Mr. Nienaber: No.

Mr. Poole: What exhibit do you have?

Mr. Nienaber: Number 8. In the second paragraph of the denial letter dated August 29 is states that you answered yes to a felony conviction and failed to include an explanation which is required under the occupational license ordinance. Do you agree with that?

Mr. Poole: Yes, but I don't agree that is the reason for the denial. The reason for the denial is spelled out and says by failing to include this conviction in your application, you provided false and untruthful information.

Mr. Nienaber: That's in the third paragraph, but in the...

Mr. Poole: That's in the second paragraph.

Mr. Nienaber: But it's also in the second paragraph that you did not provide an explanation, correct?

Mr. Poole: That's correct.

Mr. Nienaber: Now, you were charged with several counts involving sexual activity and what not, were you?

Mr. Poole: All of those counts were dismissed. I was not charged with any type of sexual crime. I was charged with a Class D Felony, promoting human trafficking, forced services. It is not a sex offense. The original charges yes, but all those charges were dismissed.

Mr. Nienaber: You were charged with thirteen counts involving trafficking, rape, human trafficking, unauthorized relations with a minor, is that correct?

Mr. Poole: They are absurd accusations. They were all dismissed. There were no minors involved. I received probation. If you think I was involved in all that stuff, don't you think I would have received a greater penalty?

Mr. Nienaber: And as a result of you pleading guilty to the crimes, your license was suspended with the bar association in Kentucky?

Mr. Poole: That is correct.

Mr. Nienaber: And how long is that suspension?

Mr. Poole: We are currently undergoing that process with the bar association.

Mr. Nienaber: It was an indefinite suspension wasn't it?

Mr. Poole: Yes and we are negotiating at this time.

Mr. Nienaber: And the Ohio Bar Association also suspended your license to practice law, is that correct?

Mr. Poole: That is correct.

Mr. Nienaber: And do you acknowledge that the crimes that you plead guilty to, involve crimes of moral turpitude?

Mr. Poole: I don't know whether I would acknowledge that.

Mr. Nienaber: If you go to Exhibit 6, there is a definition of moral turpitude by Black's Law Dictionary and you would acknowledge that Black's Law Dictionary is the go to source for definitions within the law, is that correct?

Mr. Poole: I would rather see the definition from the Kentucky statute.

Mr. Nienaber: Do you agree that the crimes for which you plead guilty would in fact fall into the classification of moral turpitude?

Mr. Poole: No. That's no grounds for denying an occupational license.

Mr. Nienaber: The application that you filed stated that you were going to start a business and legal consulting business, correct?

Mr. Poole: I do paralegal services for other attorneys.

Mr. Nienaber: Did you check with the Kentucky Bar Association to determine if the services you were going to render are authorized?

Mr. Poole: No, I have not.

Mr. Nienaber: Have you contacted or communicated with the Ohio Bar Association?

Mr. Poole: I received notification from the Ohio Bar Association that they were following the same procedure, they would follow whatever Kentucky does.

Mr. Nienaber: You have not contacted the Ohio Bar Association either?

Mr. Poole: No, I have not.

Mr. Nienaber: The statement of appeal that you filed that you acknowledge that your application was not complete, did you not?

Mr. Poole: Yes.

Mr. Nienaber: And you acknowledged that you did not in fact explain any of the crimes to which you plead guilty?

Mr. Poole: Yes.

Mr. Nienaber: And you acknowledge that the crimes that you plead guilty to were a serious breach of your fiduciary relationship which you had with individuals?

Mr. Poole: Absolutely not. I had no fiduciary relationship.

Mr. Nienaber: You understand and acknowledge that business and legal services that you are going to be providing, if you were to receive an occupational license, would in fact create a fiduciary relationship, is that correct?

Mr. Poole: No.

Mr. Nienaber: You wouldn't?

Mr. Poole: I'm not acting as a fiduciary in any manner.

Mr. Nienaber: Your business is not going to be providing legal advice to individuals?

Mr. Poole: No, sir. I will not be providing legal advice. I no longer have a license to practice law.

Mr. Nienaber: Exactly and the advice that you are going to be given will be in fact related to the practice of law, will it not?

Mr. Poole: No.

Mr. Nienaber: And then...

Mr. Poole: No, I will be doing paralegal services for other attorneys.

Mr. Nienaber: Explain then what legal consulting means? As you used in your application.

Mr. Poole: I refer to being doing business consulting and legal work for other lawyers. That's what I will be doing.

Mr. Nienaber: And what is the scope of the legal consulting that you are going to be providing as used in the context of your application? You chose those words in your application.

Mr. Poole: It won't necessarily be legal consulting. The only consulting I would do is with the attorneys that I would work with.

Mr. Nienaber: So is your application inaccurate in that it did not identify the appropriate type of business that you were going to be in?

Mr. Poole: I will be providing business consulting and paralegal services, so if I say business and legal consulting, when I refer to legal consulting, it is working as a paralegal for others.

Mr. Nienaber: Okay. Do you know what a fiduciary relationship is?

Mr. Poole: Yes I do.

Mr. Nienaber: And if you are providing legal services to anyone, do you not agree that creates a special position of trust with that person to whom you are providing those legal services?

Mr. Poole: No, I am simply, if I were to go to paralegal school instead of law school. I am doing paralegal services for other lawyers. It does not present any type of legal advice, or any type of fiduciary responsibility.

Mr. Nienaber: And you are stating here tonight to the crimes to which you plead guilty in Kenton County, do not constitute the acts of baseness, vileness, or depravity in the private and social duties which one person owes to another?

Mr. Poole: I don't think so.

Mr. Nienaber: Did the court agree with that position when you were sentenced?

Mr. Poole: The court did not ask me that question.

Mr. Nienaber: But the court did comment quite strongly in its statement when you were sentenced, did it not?

Mr. Poole: The court made comment.

Mr. Nienaber: Yes and I would like to show you that comment made by Judge Bartlett and I would like that to become part of this record.

Video played and entered into the record (Exhibit 12) - <https://www.fox19.com/2021/12/17/nky-attorney-serve-less-than-year-jail-human-trafficking-charges/>

Mr. Nienaber: Mr. Poole, you plead guilty to four charges of promoting human trafficking, correct?

Mr. Poole: That is correct.

Mr. Nienaber: And you were given a five year sentence suspended?

Mr. Poole: That is correct.

Mr. Nienaber: With six months in jail and a \$40,000 fine?

Mr. Poole: That is correct.

Mr. Nienaber: And have you served that time?

Mr. Poole: Yes I have.

Mr. Nienaber: And have you paid the fine?

Mr. Poole: Yes I have.

Mr. Nienaber: And you still hold to your guns in fact that the crimes to which you plead guilty to do not address moral turpitude?

Mr. Poole: I've answered that question.

Mr. Nienaber: And you do not believe that the crimes that you committed breached a fiduciary duty which you have with individuals?

Mr. Poole: Absolutely not.

Mr. Nienaber: And you still hold to your guns that there is no fiduciary duty or relationship between you and clients in your legal and business consulting practices that you intend to undertake?

Mr. Poole: Absolutely not.

Mr. Nienaber: I take no pleasure in being here but if ever there was a crime which someone would plead guilty to is related to the kind of work you want to practice here and provide in the City of Florence, I don't know, I can't think of one. Personally, I can't and it is beyond cavil to suggest that you think that a business license to run a business and legal consulting practice is appropriate given the current history which we have and your current situation with the Bar Association in Kentucky and Ohio, and your relationship with the courts. How much longer are you going to be on probation?

Mr. Poole: Approximately four years.

Mr. Nienaber: Four more years and the terms of your probation, one is you can't practice law.

Mr. Poole: That's correct, no that's not correct. The spelled out terms from the Bar Association are that I have been indefinitely suspended at this time.

Mr. Nienaber: But you cannot reapply to have your license reinstated in Ohio or Kentucky until your probation is over, correct?

Mr. Poole: Probably, but I don't know that there is any specific association rule that would prohibit that.

Mr. Nienaber: Without objection, I would like to introduce these exhibits. Any objections?

Mr. Poole: I would like to comment on the, of course this television program is awfully defamatory. I'm not here to retry my case. I was charged with significant crimes. I was involved with several women over the years that were my girlfriends. What this ended up being is blown way out of proportion. This came in because there was a political witch-hunt that went after Tim Nolan and he was involved in all kind of stuff that I was not involved in. The Attorney General indicted me based on an investigation that was considerably flawed because they gave me a Class D Felony. They charged me with all of these crimes, ruined my career, and then charged me with a Class D Felony and gave me probation. As part of that probation, I had to serve a split sentence and six months in jail. This crime that I am convicted of did not involve any clients, did not involve any minors, and did not involve any third parties. What this was, was a girlfriend situation over the years. I bought the girls cars, I paid their rent. I did things like that for them that in retrospect I shouldn't have done but it is now criminal behavior in Kentucky and because of that, I went ahead and entered a plea after three years of going nose to nose with the Attorney General, that they finally made this offer to serve six months and I went ahead and accepted. So that's what happened. This is not your classic idea of human trafficking or anything along those lines. It did not involve any clients. The current business that I am proposing does not present any type of fiduciary relationship. You want to condemn me and say that I lack the moral turpitude that under this law is not sufficient grounds. You have to show a connection between my business and the crime for that I was involved in and I allege, that there is no connection. Thank you.

Mr. Nienaber: You have nothing to dispute any of these Exhibits 1-11, do you?

Mr. Poole: Well you know Mr. Nienaber I have not actually gone through each and every one of these exhibits. I'm not going to object because I don't think there is anything in here worth objecting over. I'm not going to sit here and, you want to say am I going to dispute any of the facts that are in here, well, I mean, the charges that were originally rendered against me, all or most of them were dismissed.

Mr. Nienaber: Okay, Have you rested your case then Mr. Poole?

Mr. Poole: I would say.

Mr. Nienaber: And I as well.

Under the City Ordinance, Mr. Nienaber advised only city council could deliberate. Councilmember Huff motioned for council to move to the Caucus Room to deliberate, with a second by Councilmember Aubuchon at 6:34 p.m. **All councilmembers present voted aye.**

City Council returned to the Council Chamber at 6:48 p.m. and Councilmember Wingo motioned to come back into session with a second by Councilmember Osborne. **All councilmembers present voted aye.**

Councilmember Aubuchon stated based on the deliberation of city council and testimony, the Florence City Council upholds the denial of the Occupational License and read the following Findings of City Council:

FINDINGS OF FACT AS ISSUED BY FLORENCE CITY COUNCIL

1. Citimark Properties, LLC (“Citimark”) applied for an Occupational License on July 28, 2022.
2. Citimark is a Kentucky Limited Liability Company Organized in Kentucky. There are two members of Citimark, Robert L. Poole and Jenny Poole.
3. On August 29, 2022, Citimark’s Request for an Occupational License was denied.
4. On September 16, 2022, Citimark and Robert L. Poole appealed the City’s denial of its Occupational License.
5. A review of the Application submitted by Citimark contained incomplete material information relating to prior convictions.
6. Citimark and Robert L. Poole failed to include material information on its application relating to prior convictions in violation of Florence’s Occupational License Ordinance.
7. The nature of the business as indicated on Citimark’s Application is to Provide “Legal and Business Consulting”.
8. Robert L. Poole has been suspended from the Practice of Law by the Kentucky Supreme Court and the Ohio Supreme Court.
9. Robert L. Poole is not permitted under Kentucky Law to practice law.
10. Issuance of an Occupational License to Citimark would not be in the best interest of the public.
11. All Requirements of the City’s Ordinance §110.04 have been complied with in all respects.

MUNICIPAL ORDER MO-10-22:

Based on the finding of facts and deliberation of council, Mayor Whalen read Municipal Order MO-10-22. A Municipal Order approving the Findings and Decision of the City Council in the matter of the Occupational License Appeal of Robert L. Poole d/b/a Citimark Properties, LLC. Mayor Whalen called for a motion to approve Municipal Order MO-10-22. Councilmember Osborne motioned to approve Municipal Order MO-10-22 with a second from Councilmember Wingo. Mayor Whalen requested a Roll Call Vote. Councilmember Carroll, yes; Councilmember Winn, yes; Councilmember Huff, yes; Councilmember Aubuchon, yes; Councilmember Wingo, yes; Councilmember Osborne, yes. **Roll call recognized six yes votes, approving Municipal Order MO-10-22.**

DISCUSSION OF EMPLOYEE HANDBOOK CHANGES:

Mayor Whalen called upon Linda Chapman, CFO/HR, with regard to the employee handbook changes.

Linda Chapman, CFO/HR, advised she had three recommended changes to the Employee Handbook. As recommended by upper level Administration, the first change would be to the general grooming policy to include non-distressed business casual jeans on Fridays for non-uniformed employees if the employee's work schedule permits. The second change correlates with KRS 95.010. KRS 95.010 stipulates police departments have annual leave of fifteen working days. Holidays do not apply. Previously, adjustments were made to annual leave and sick days in 2014. Based on those adjustments and to adhere to KRS 95.010, Ms. Chapman recommends for employees beginning since July 1, 2014, adjustment to the accrual amounts to add three additional vacation days for each classification and remove three sick days from each classification. Additionally, this would provide more flexibility for employees with regard to usage of their time as vacation days instead of sick days.

Mayor Whalen stated employees since July 1, 2014 would gain three vacation days and lose three sick days which will permit the city to be in compliance with KRS 95.010.

Ms. Chapman stated the last change corresponds with an amendment to the donated policy time to allow the use of donated time for the employee as well as their immediate family as defined in the funeral leave policy. Previously, the donated time was only permitted for the employee. A few instances have occurred and this request was made.

Mayor Whalen stated donated time only occurs when the employee is out of all time and other employees are permitted to donate time to the employee in need.

Councilmember Huff inquired as to how many sick days' employees receive per year. Ms. Chapman stated with the new change, the employees hired since 2014 will receive seven sick days per year.

Mayor Whalen stated sick days are accrued per year and carried to a maximum of 520 hours per year. Ms. Chapman stated the maximum 520 hours were provided to be used until long term disability commenced.

Councilmember Aubuchon inquired with regard to holiday pay and the accruals. Ms. Chapman stated holiday pay and annual leave are accrued as one. Employees are not permitted to take annual paid leave in excess of the hours unless an employee is hired during a period with a holiday. At that time, the employee will be permitted to have a negative annual paid leave balance.

Councilmember Aubuchon inquired with regard to a terminated employee and what occurs with their accruals. Ms. Chapman stated as long as an employee has been employed for longer than a year, and the employee leaves in good standing, the holiday pay can be paid out upon approval of the department head.

No other questions or discussion were needed. Therefore, an Ordinance would be placed on the next agenda for first reading.

ADJOURNMENT:

There being no further business to come before Council, Mayor Whalen called for a motion to adjourn the Special Meeting. Councilmember Huff so moved, with a second from Councilmember Winn. **Councilmembers present voted aye**, the time being 7:00 p.m.

ATTEST:

/s/ Melissa Kramer
Melissa Kramer, City Clerk

APPROVED:

/s/ Diane E. Whalen
Diane E. Whalen, Mayor

