

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING

Monday, July 12, 2010

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on, Monday, July 12, 2010 at 6:00 p.m., in the Council Chambers of the Municipal Building.

President of Council, David Malone called the meeting to order. The Pledge of Allegiance to the Flag followed a moment of silent prayer.

Roll Call showed the following members to be present:

Kevin Johnson	1 st Ward
David Malone	2 nd Ward
Nicholas Basham	3 rd Ward
Jerrold Albrecht	4 th Ward
Richard Noel	6 th Ward

Also present were Mayor Jane Murray; City Solicitor, Michael L. Jones and City Auditor, M. Trent Williams.

The absence of Vice President Haas was excused, on a motion by Councilman Albrecht.

Acknowledging a memo from the Solicitor, Councilman Albrecht moved to add to the agenda five ordinances ratifying the Memorandums of Understanding entered into with the five City bargaining units.

The motion carried. The ordinances were added to the agenda as Items # “7i”, “7j”, “7k”, “7l” and “7m”.

There was no public hearing and no one present wished to address Council with regard to any item on the agenda.

LEGISLATION

The Clerk gave a **third reading** to an ordinance to submit to the electors of the City of Portsmouth, Ohio, at the General Election to be held on the 2nd day of November 2010, a proposed renewal tax levy for the Flood Defense System of the City of Portsmouth, Ohio, after declaring the amount of taxes that may be raised by levy at the maximum rate authorized by law without a vote of the electors to be insufficient.

Councilman Albrecht made a motion to pass the ordinance.

The Auditor pointed out several items to Council for their consideration as well as a typo regarding the various dates within the ordinance. The Auditor requested that Council first amend the ordinance to reflect the appropriate dates. He also noted some wording needed to be changed and advised that those sections containing the purpose of the levy needed to include “operations”. Mr. Williams felt these things needed to be addressed first then whether or not this should be a “renewal” or “replacement” levy could be discussed. Following the Auditor pointing out and explaining the amendment that needs to be made with regard to correcting the dates and inserting the word “operations” Councilman Johnson made a motion to amend the ordinance in accordance with the Auditor’s suggestions.

There were no questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 The ordinance was amended accordingly.**

The Auditor explained the difference between a “replacement” or a “renewal” levy. He advised the monetary difference to be an additional estimated \$24,000.00 per year. Mr. Williams reported the flood defense fund to have been increased from a balance of \$61,000 in 1998 to \$1,023,000.00 as of June 30th of this year. He noted the purpose is not to “sit on a bunch of money” and stating that this balance provided the City with a way to deal with problems that can occur on a vital flood defense system. Mr. Williams felt the City needed to have funds to deal with the necessary things without being caught off guard. He advised the City’s goal has been to build up this fund and to where we never went below a \$500,000.00 minimum balance. The Auditor complimented the City on doing “a very good job” building this fund to a million dollars. He described it as “good fortune” that the City actually has the money to pay for the large expense that it has facing it with the upcoming levee project. Mr. Williams felt the question to be about how Council wants to approach his issue for the future.

Councilman Johnson, acknowledging an understanding of the Auditor’s reasoning, made a motion to amend the ordinance to change the word “renewal” wherever it exists in the ordinance, to “replacement”.

In response to Councilman Basham, the Auditor acknowledged that a replacement levy will increase property taxes “very slightly”, noting, however, it would be an increase and further acknowledging that a renewal levy will maintain the taxes at the same rate as its present assessment. He explained that evaluation increases are done by the county and state.

The Auditor advised Council that the million dollars that we presently have and the money that the City will continue to collect throughout the year, will increase to about 1.1million dollars. He noted the City will expend about \$700,000.00, which will reduce the amount well below the half million dollar limit that Council has set as a minimum amount of available funds. Mr. Williams further noted that we do not yet know the exact cost of repairing the system. He stated it to be for that reason that in the beginning he suggested just asking for a renewal in order to keep the flow of money coming into the City. He noted an additional \$24,000 per year was not very much when looking at the whole picture. The Mayor felt that until the need for a recertification of the levy, it was probably felt the amount of money coming from the levy would be adequate. She felt that regardless of whether the City asks for a renewal or replacement levy, that sometime in the near future it would be wise to look at different ways of collecting revenue for this system, noting that the “bulk” of the tax revenue comes from residential property owners, which has decreased due the fact that the Portsmouth City Schools and Shawnee State have removed many of these properties as well as those properties that have been abandoned by their owners who are no longer paying any taxes. The Mayor voiced her preference of perhaps going to a “fee system” like those charged by “enterprise funds”. She felt the flood defense provides the same protection to the hospital, university and other non-profit organizations who pay sewer, water and sanitation fees. Noting how the State increases property taxes across the board, the Mayor felt they were considering our taxes comparable to a state average, which she felt they are not. She did not believe property taxes to be the equitable way of funding flood defense. Councilman Johnson concurred with the Mayor and with regard to his motion to amend the ordinance he said he felt it to be within Council’s fiduciary responsibility. He continued by explaining that according to the ordinance, as is, one mill is not one mill but is actually 9.1 mills. He felt the amendment would enhance the minimum that Council wants to maintain in Flood Defense and acknowledged that during the levee recertification process, the City would be “dipping into” that minimum amount. Mr. Johnson felt that the more we do now the less we will have to do with other options. The Mayor concurred with Mr. Johnson’s statements as he made them but clarified that what she meant was that the City immediately start looking at other ways of funding flood defense. The Auditor agreed, noting that those plans should be looking ahead to 2016 when this present levy, if renewed/replaced, will be coming to an end. The Mayor’s opinion was that if a new plan is in place prior to the expiration of the tax levy, the City could remove the levy. The Auditor stated it to be his guess that if the voters put on the tax the voters would be the ones that would have to remove it. Councilman Johnson’s attempt to comment was interrupted by the Mayor who noted the law would have to be reviewed. The Solicitor advised this to be something that is too far away to address at this time and felt the discussion was getting off track. The Mayor expressed her opinion that it is important this conversation take place for when the levy is on the ballot, saying she guaranteed there would be people vote against the levy because they will see it as increased taxes. The President noted that consideration is being given to increasing the income tax and asking citizens to participate. Noting that while the amount being considered as an increase seems small to some it could place a hardship on others and therefore consideration has to be given those individuals as well. The Auditor agreed with Mr. Johnson in regard to 1 mill not actually being “1 mill” and felt it should be stated as to what it is. Noting this millage should, over the next five years, generate \$100,000.00 to \$120,000.00 he surmised this would be a minimum amount that will be required to certify the City’s flood defense system. It was noted that this levy would be cheaper, by far, for the citizens than the cost of flood insurance.

There being no further discussion the roll was called on the motion to amend. **VOTE: ayes 2 (Noel; Johnson) - nays 3 (Malone; Basham; Albrecht) The motion to amend failed.**

At the request of the Auditor, Councilman Albrecht made a motion to amend the ordinance to reflect, wherever necessary, the word “renewal”.

The roll was called. **VOTE: ayes 5 – nays 0 The ordinance was amended accordingly.**

There being no further discussion the roll was called on Councilman Albrecht’s earlier motion for passage. **VOTE: ayes 5 – nays 0 The ordinance was passed. ORD. #33-10**

The Clerk gave a **third reading** to an ordinance authorizing the Mayor to enter into a contract with Howerton Engineering to assist the City with certification of its floods protection system in accordance with FEMA criteria.

Councilman Albrecht made a motion to pass the ordinance.

The Auditor reminded Council that the ordinance needed to be changed to provide for the appropriation for this project. He suggested the following “and to appropriate \$630,000.00 for phase I from Flood Defense Fund #265”.

Councilman Basham inquired as to whether or not Howerton Engineering is looking at this as being the cost to certify the system or the cost for just doing the study”. The Mayor explained this to be the amount that will allow the City to do “all the field work”. Mr. Howerton, approached the microphone and advised this to be the amount proposed, “Assuming the system, as is, as a result of our study, that it will take to certify”.

He further advised that phase II will be addressing those issues that are identified in phase I that need corrected.

Councilman Johnson moved to amend the ordinance as suggested by the Auditor.

In response, the Auditor voiced his preference of not wanting to expend this entire amount from the Flood Defense Fund in the current year as a capital outlay, He said he would have preferred that the City be able to finance this cost and not have to deplete the entire Flood Defense Fund. It was noted by Mr. Johnson that the City can't finance this project due to a "(not discernible) roadblock". This fact was acknowledged by the Auditor.

There being no further questions or comments the roll was called. **VOTE: ayes 5 – nays 0 The ordinance was amended.**

There being no further questions or comments on the motion for passage the roll was called. **VOTE: ayes 5 – nays 0 The ordinance was passed. ORD. #34-10**

The Clerk gave a **third reading** to a resolution providing for the annual tax budget for municipal purposes for the year 2011.

Councilman Albrecht made a motion to adopt the resolution.

There were no questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 The resolution was adopted. RES. #11-10**

The Clerk gave a **second reading** to an ordinance to submit to the electors of the City of Portsmouth, Ohio, at the General Election to be held on the 2nd day of November 2010 a proposed amendment to Section 3 of the Charter of the City of Portsmouth, Ohio.

Councilman Albrecht moved this constitute a second reading.

There were no questions or comments. The roll was called. **VOTE: ayes 3 (Noel; Johnson; Malone) – nays 2 (Basham; Albrecht) A second reading was declared.**

The Clerk gave a **second reading** to an ordinance to amend Ordinance No. 16 of 2010 that made appropriation for the current expenses and other expenditures of the City of Portsmouth, Ohio, beginning January 1, 2010 and ending December 31, 2010, as provided for in Section 49 of the Charter of the City of Portsmouth, Ohio in order to maintain requirements of EPA.

Councilman Albrecht moved this constitute a second reading.

There were no questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 A second reading was declared.**

The Clerk gave a **first reading** to an ordinance authorizing the appropriation of two checks, one in the amount of \$4,046.68 received from HCC Insurance Company to repair damage to a 2008 Crown Victoria Police Department Vehicle, and another check in the amount of \$3,363.22 received from U.S. Specialty Insurance Company to repair damage to a 2008 Crown Victoria Police Department Vehicle, into Police Department Vehicle Maintenance Line Item No. 101.221.5264 in order to pay repair costs.

Councilman Albrecht moved to suspend the rule requiring an ordinance be read on three separate dates.

The roll was called. **VOTE: ayes 5 – nays 0 The rule was suspended.**

Councilman Albrecht made a motion to pass the ordinance.

There were no questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 The ordinance was passed. ORD. #35-10**

The Clerk gave a **first reading** to an ordinance authorizing the appropriation of \$4,708.00 from CIP Fund No. 302 into Engineering Miscellaneous Projects Line Item No. 301.112.5529 for repairs to Chillicothe Street sidewalks.

Councilman Albrecht moved this constitute a first reading.

There were no questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 A first reading was declared.**

The Clerk gave a **first reading** to an ordinance authorizing the appropriation of CDBG monies Fund NO. 243 Grant No. A-F-09-167-1 in the amount of \$10,424.00 to Personal Services Costs and \$7,767.00 to Others for a total of \$18,100.00.

Councilman Albrecht moved this constitute a first reading.

There were no questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 A first reading was declared.**

The Clerk gave a **first reading** to an ordinance to ratify a Memorandum of Understanding entered into the 24th day of May, 2010, by and between M. Jane Murray, Mayor of the City of Portsmouth, and the Fraternal Order of Police, Ohio Labor Council, Inc. representing the supervisor and patrol officers bargaining units of the Portsmouth Police Department dealing with budgetary issues and annual pay issues.

Councilman Albrecht moved to suspend the rule requiring an ordinance be read on three separate dates.

The roll was called. **VOTE: ayes 4 (Albrecht; Noel; Malone; Basham) – nays 1 (Johnson) The rule was suspended.**

Prior to a motion being made the Solicitor advised Council that this was the Memorandum of Understanding between the City of Portsmouth and the FOP regarding a reduction in pay for this year. He further advised that this agreement as well as the next agreement establishes a health insurance committee. Mr. Jones explained that to basically be to address costs of health insurance and shows the bargaining unit's willingness above the City and the union to address future costs that is going to be eventually incurred by the City. Mr. Jones described this as a "positive step". Councilman Noel objected to the ratification of the Memorandums of Understanding. The Solicitor explained to Mr. Noel that these memorandums have already been agreed to and this is just the way Council formally accepts them being incorporated into the bargaining agreements.

The Auditor, noting this may not be appropriate to be brought up at this time, acknowledged there to be a potential that one or more of these ratifications may not pass. He asked Council, if in the event these Memorandums of Understanding do not pass, did they want him to go back and give the raises to the employees effective at the time of the signing of the Memorandums. The Solicitor concurred with the Auditor and further noted these ordinances of ratification are not surprise to anyone. He pointed out the fact that Council authorized the negotiation of these particular issues and the fact that there were several meetings, saying this is not anything new but is basically a formal adoption of to what has already been agreed. With regard to the Health Insurance Committee, the Solicitor stated that if Council does not want to establish that committee, he would respectfully recommend adopting the ordinance and indicate that they do not want to establish a committee. Mr. Jones felt it would be a disservice to the unions and the community to negotiate in good faith and then not follow through. The Solicitor, in response to the President, confirmed this agreement is representative of the City government; the bargaining units and the City's administration. He further noted this ratification is not something that is going to establish any type of additional reductions or increases. He felt that if sitting around the table and talking can further reduce health insurance costs it would be a positive.

There was some discussion as to who did and who did not receive copies of the Memorandums of Understanding. The Solicitor stated that if there is any questions as to their content, the Memorandums have been available in his office since May 24th and did not feel there to be any indication that anyone was trying to hide anything. Councilman Johnson stated that he has read all of the Memorandums and decided the increases that were forfeited by the employees would maybe amount to about \$150,000.00 to \$156,000.00 for the remainder of this year and claimed the general fund deficit to be at \$1.12 million at this time. He pointed out that the estimated deficit for the entire year was projected to be \$1.2 million. Mr. Johnson figured that in return for possibly 10% of current deficit the City has "given away the store". He said "We've, this forbids Council, these MOUs forbids Council or the Mayor from provides, I mean everything from raises the whether persons deserves it or not it, we cannot furlough, we cannot even look at layoffs, we can and each one of these MOUs basically says also that, we're making these changes but no our contracts are not up for renegotiation, so we cannot look at our total personnel costs, we can't really look at insurance and if you read the insurance provision of the two FOP bargaining units it doesn't talk about the only thing it talks about is creating this committee". He continued by reading verbatim from the Memorandum of Understanding the function of the committee. In response to Mr. Johnson, the Solicitor clarified that the Memorandum of Understanding that was being read applies only to that bargaining unit not all five bargaining units. Mr. Johnson noted the committee would consist of a member from each bargaining unit. He continued reading that part of the Memorandum of Understanding that related to the insurance committee and claimed it to not say anything about reducing the cost of insurance. Councilman Basham noted that in the current union contract, if the Memorandums of Understanding are not accepted, furloughs cannot be implemented. When asked if this were correct, the Mayor said she did not know the answer to the question. Mr. Basham pointed out that she is the executive head of the City. Mr. Basham reiterated the fact that the prohibition against furloughing is addressed in the exiting contract and not approving the Memorandums of Understanding does not change that fact, therefore furloughing would not be an option without the chance of a strike or grievance hearings.

The Auditor advised that the budget that was passed and approved was based upon these agreements, noting these ratifications are housekeeping issues at this point and are not even negotiable. The Solicitor described it as a concession and noted there to still be options for the City to go back and ask for further concessions if necessary. He explained that part of the negotiating process is if one thing is given up then something else is expected in return. Mr. Jones explained that all the bargaining units have unanimously stated

is that they will give up their 3% pay raise but they did not want (*not discernible*). Mr. Jones explained that did not mean the City could not do it but if the City does do it then they will have violated this agreement and used the savings that were negotiated by the unions and the City. He continued, saying, "If you don't adopt this, which is law, whether it is 120 or 180 whatever the figure might turn out to be, that is a substantial amount of money that we would otherwise would not have saved.

Councilman Basham made a motion to table the ordinance.

The roll was called. **VOTE: ayes 4 (Noel; Johnson; Basham; Albrecht) – nays 1 (Malone)**
The ordinance was tabled.

The Clerk gave a **first reading** to an ordinance to ratify a Memorandum of Understanding entered into the 24th day of May, 2010, by and between M. Jane Murray, Mayor of the City of Portsmouth and the Fraternal Order of Police, Ohio Labor Council, Inc. representing Police/Fire Dispatcher Bargaining Unit dealing with budgetary issues and annual pay issues.

Councilman Albrecht made a motion to table the ordinance.

The roll was called. **VOTE: ayes 5 – nays 0 The ordinance was tabled.**

The Clerk gave a **first reading** to an ordinance to ratify a Memorandum of Understanding entered into the 25th day of May, 2010, by and between M. Jane Murray, Mayor of the City of Portsmouth, and the Portsmouth Firefighters, I.A.F.F. Local 512 dealing with budgetary issues and annual pay issues.

Councilman Albrecht made a motion to table the ordinance.

The roll was called. **VOTE: ayes 5 – nays 0 The ordinance was tabled.**

The Clerk gave a **first reading** to an ordinance to ratify a Memorandum of Understanding entered into the 27th day of May, 2010, by and between M. Trent Williams, Auditor of the City of Portsmouth, and AFSCME Local 1039C and Ohio Council 8 of the American Federation of State, County and Municipal Employees, AFL-CIO dealing with budgetary issues and annual pay issues.

Councilman Albrecht made a motion to table the ordinance.

The roll was called. **VOTE: ayes 5 – nays 0 The ordinance was tabled.**

The Clerk gave a **first reading** to an ordinance to ratify a Memorandum of Understanding entered into the 14th day of June, 2010, by and between M. Jane Murray, Mayor of the City of Portsmouth and AFSCME Local 1039 and Ohio Council 8 of the American Federation of State, County and Municipal Employees, AFL-CIO dealing with budgetary issues and annual pay issues.

Councilman Albrecht made a motion to table the ordinance.

The roll was called. **VOTE: ayes 5 – nays 0 The ordinance was tabled.**

STATEMENTS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Keith Nyland – 660 Dunlop Road inquired about Shawnee State University's request to vacate a portion of some streets and wanted to know from where the funding for that is going to come.

Miscellaneous business and reports:

Neither the City Clerk, the Mayor nor the President had anything to report.

Miscellaneous business from City Council

Neither the 1st or 2nd ward had anything to report.

3rd Ward

Councilman Basham, with regard to the Rules of Council, which were amended at the last meeting to include a Neighborhood Advisory Committee, said he has talked with Mr. Smith at the Health Department and has been advised that there is already a neighborhood advisory committee in accordance with the Ohio Revised Code. Mr. Basham's question was whether or not we now have a second committee and further questioned Council doing this if this committee already exists under the ORC. Councilman Johnson stated that Council Rules were not revised to make a (*not discernible*). In response to Mr. Basham asking if this was not one of the committees in the list that was provided to Council, Mr. Johnson stated that he had two different e-mails and that he knew there were positions open on the Neighborhood Advisory Committee through the Health Department and advised that to not be a part of the "three committees of Council". Mr. Johnson noted that he does not even mention that committee and claimed the two committees to be

“totally separate”. Mr. Basham than asked Mr. Johnson what committees did the Council establish and was told by Mr. Johnson that he did not have that list with him. Mr. Johnson reminded Mr. Malone that, according to his last, e-mail he was going to begin making appointments. Mr. Malone advised that he has not yet made any contacts. Mr. Basham noted that Mr. Johnson, in an e-mail, had mentioned that Council would be recommending people to be on the Health Department’s Neighborhood Advisory Committee, however according to the Ohio Revised Code that is the Mayor’s job. Mr. Basham asked the Mayor if she wants him to recommend someone. The Mayor’s response was, “Actually those appointments have all been made”.

4th Ward

Councilman Albrecht said he felt the establishment of committees should have been done by ordinance. In response to it being noted by Councilman Basham that there is already a Cultural Affairs Panel, Mr. Johnson said they meet once a year to disperse funds from the Hotel/Motel Taxes and noted that to be all they do and advising that they do not do cultural affairs. Mr. Basham asked if it could now be seen how confusing it is to have two committees with the same name. Mr. Johnson’s response was “no”. Mr. Basham noted there to be an ordinance establishing the Cultural Affairs Panel and pointing out that now the Rules of Council also has a Cultural Affairs Committee. Mr. Johnson claimed this to not be the committee’s full title. Mr. Johnson claimed to have gotten his advise from the City Solicitor. The Solicitor acknowledged that they had gone back and forth regarding this matter and noted it had been discussed at previous meetings. Mr. Albrecht still contended that the establishment of committees should be done by ordinance. The Clerk reiterated her statement that the rules of Council are not amended by ordinance, however the establishment of committees is by ordinance. The Solicitor advised Mr. Albrecht that including this to the rules was passed at the last meeting. Mr. Johnson noted that the City Building Committee was established by a vote of Council not by ordinance. Mr. Johnson said Council is allowed under its rules to establish its own means of operation. Mr. Albrecht pointed out the fact that the Building Committee was a temporary committee, however Mr. Johnson, acknowledging that may be, still contended that Council is allowed under charter to establish its rules of how it operates and felt it made sense to have Council’s committees under the rules. He continued explaining his reason for requesting the change in the rules and referred to other cities as examples.

6th Ward

Councilman Noel reported having spent about half a day touring the 6th ward. He claimed there to be a lot of work that needs to be done and commended the Health Department for all that they have done.

Mr. Noel reported having received “a rash of calls” from people who are having all kinds of problems but in most cases when he reports it someone already is aware of the problem and it is being addressed.

He reported receiving calls from individuals who live outside the City’s limits who are complaining about the loss of water pressure and think someone has tapped into their line. He claimed this effects three houses, whose residents cannot get enough water to take a bath. Mr. Noel said he has already talked with Sam Sutherland. Mr. Noel suspected a felon s being committed. He also felt the 6th ward to have more than its share of problems.

The Solicitor had nothing to report.

The Auditor said he was confused with what transpired regarding the five Memorandums of Understanding. With no disrespect to Councilman Johnson, the Auditor noted that the points that he was bringing up were points that were argued for hour after hour in this room until 10:00 p.m. Mr. Williams noted that all those points have been decided. However, Mr. Johnson claimed that the details he mentioned were not decided and commenced to give an example. The President gaveled and reminded the Auditor and Mr. Johnson that this was a time for reports. The Auditor acknowledged this, saying he just wanted to point out the fact that these memorandums where “hashed out” after many hours of discussion on the budget and the budget was based on things that were agreed to in the MOUs and at this point it is merely a matter of housekeeping. He also reminded everyone that the Mayor has signed off on all of them, as has the unions and himself. He added the fact that the budget and the accompanying salary ordinance has already been passed and the passage of the Memorandums is nothing more than a formality. He acknowledged this may be an issue with Mr. Johnson because he did not see the Memorandums of Understanding.

The meeting adjourned at approximately 7:15 p.m., on a motion by Councilman Albrecht.

City Clerk

President of Council