

**MINUTES – REGULAR SESSION**

**PORTSMOUTH CITY COUNCIL MEETING**  
Monday, February 14, 2011  
6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on, Monday, February 14, 2011 at 6:00 p.m., in the Council Chambers of the Municipal Building.

Acting President of Council, John Haas 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 <sup>st</sup> Ward
Rich Saddler	2 <sup>nd</sup> Ward
Nicholas Basham	3 <sup>rd</sup> Ward
Jerrold Albrecht	4 <sup>th</sup> Ward
John Haas	5 <sup>th</sup> Ward
Richard Noel	6 <sup>th</sup> Ward

Also present were Mayor David A. Malone; City Solicitor, Mike L. Jones and City Auditor, M. Trent Williams.

Council dispensed with the reading of the Journal for the regular session of January 24, 2011 and special session of January 27, 2011, on a motion by Councilman Albrecht.

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

**LEGISLATION**

The Clerk gave a **third reading** to an ordinance authorizing and directing the Auditor of the city of Portsmouth, Ohio to distribute all City Income Taxes for the year 2011 collected in accordance with City Ordinances No. 100 of 1970, No. 110 of 1976 and No. 84 of 1987 into the General Fund and Capital Improvement fund as hereinafter set forth.

Councilman Albrecht made a motion to pass the ordinance.

There were no questions or comments. The roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #09-11**

The Clerk gave a **second reading** to an ordinance authorizing the Mayor of the City of Portsmouth to apply for and accept the Assistance to Firefighters Grant Program Fire Prevention and Safety (FP&S) Grants and consider the same to be an emergency.

Councilman Albrecht moved this constitute a second reading.

There were no questions or comments. The roll was called. **VOTE: ayes 6 – nays 0 A second reading was declared.**

The Clerk gave a **first reading** to an ordinance authorizing appropriation and payment in the amount of \$10,787.50 to Vetter Builders Inc. for work performed, as a moral obligation and to avoid potential litigation, to provide for paying the following invoices from Building Account No. 301.115.5513 and declaring the same to be an emergency.

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

The roll was called. **VOTE: ayes 6 – nays 0 The rule was suspended.**

Councilman Albrecht made a motion to pass the ordinance.

The Auditor, noting that he was not aware of how someone had arrived at this account as being the one from which this invoice would be paid, advised Council that the referred to account will be depleted upon payment being made to Vetter in the amount of \$7,800.00 for repairs to the stadium and authorized by an ordinance passed last year in which over \$24,000.00 was appropriated for various safety and health/sanitary issues with the stadium. Mr. Williams advised that the entire appropriation has been expended with the most recent payment for stadium repairs. He suggested that should Council want to pay this invoice they could do so by amending the ordinance to state the amount would be paid from Fund #301 and omitting reference to a “Building Account”. In response to the Acting President and Councilman Johnson, the Auditor acknowledged that the Building Fund Account has been depleted and further acknowledged that if the ordinance is amended

to authorize the payment from Fund #301, he would be able to find some account within that fund from which the payment could be designated.

Councilman Johnson made a motion to amend the ordinance to authorize payment from Fund #301 and delete reference to a "Building Fund".

There were no questions or comments. The roll was called. **VOTE: ayes 6 – nays 0 The ordinance was amended.**

Councilman Basham expressed his concern for what the City might be sitting themselves up with regard to the rules not being followed in the first place. He asked if this would then open the door for any department that decides to renovate their office to do so without coming to Council to see if funds are available. Mr. Basham said he has looked at the Ohio Revised Code and read Section 3.12, which speaks to the fact that if the work is done without a contract, the city is not liable. He said he did not understand why consideration is being given to pay out money for something that was not approved in a deficit budget, noting that even if money is moved there will still be a negative balance. Councilman Johnson referred to past incidents when the City has paid for services done without prior approval, as a moral obligation. The Solicitor concurred. Mr. Johnson felt this to be a case of someone simply making a mistake and felt there to be a moral obligation since the work was done. Councilman Albrecht asked when would this stop, noting to pay this would be directly against the charter and the Ohio Revised Code. The Acting President, Mr. Haas noted that Section 57 and 58 of the charter seems to indicate that if the procedures in Section 57 were not followed, and noting that they were not, he read from Section 58, which provides that "Council or any officer of the City waive or qualify the limitations fixed by such section or fasten upon the City any liability whatever in excess of such limits". Mr. Haas stated it to be his understanding that procedures were not followed with respect to pre authorization of a contract. He gave an overview of Section 57 and expressed his belief that Council would be in direct violation of these sections. Mr. Haas expressed his understanding of the argument about this being a moral obligation but it seemed to him Mr. Vetter would have a better potential lawsuit against the City if we paid this, since members of Council would be violating their oath. Mr. Haas felt that passing this ordinance Council would be opening itself up to potential litigation over the provisions in the charter. He expressed concern about whether a moral obligation felt by Council would outweigh a taxpayer law suit for authorizing a payment that was not pursuant to the charter. The Solicitor advised that this was not properly authorized and approved before the work began. Mr. Jones further advised that he and the Auditor have had correspondence from this individual's attorney indicating that if this is not paid there will be legal action. He said he understands that to potentially be something that a defense could be taken that this should not be paid because it was not properly authorized but he was asked to prepare this legislation by our former Mayor and the current Mayor. He noted the indication to be that they wanted to put this behind us and move forward. Stating that he was not here defending anyone's prior actions and whole heartedly agreed that there is an issue with potentially setting a president, he said he has to look at this from a standpoint of minimizing exposure to the City and trying to put a bad situation behind us behind us to make the best of a bad situation. Mr. Jones advised Council that he would not have any problems, whatsoever; defending the City Council's actions should they choose to pass this ordinance as a moral obligation. He said he was convinced there will be some type of action filed with the Court and that we will be spending time, money and resources on something that the outcome of the Court cannot be determined. The Solicitor felt this needs to be looked at what is best for the City in the way of cost and benefit. Mr. Jones reiterated the fact that he would fully support and defend Council should they vote to pass this ordinance. In response, Councilman Basham stated that for himself, personally, he could not put a moral obligation above the sworn oath he took upon taking this office.

There being no further questions or comments the roll was called. **VOTE: ayes 3 (Noel; Johnson; Saddler) – nays 3 (Haas; Basham; Albrecht) The ordinance was defeated due to a lack of four affirmative votes.**

In response to correspondence from the City Clerk, Councilman Basham made a motion to remove Item "7d" from the agenda due to the fact that an ordinance addressing this issue had already been passed. The motion carried viva voce. **VOTE: ayes 6 – nays 0 The item was removed from the agenda.**

The Clerk gave a **first reading** to a Resolution repealing Resolution No. 13 of 2010 adopted by City council on October 25, 2010.

Councilman Albrecht made a motion to adopt the Resolution.

The Mayor requested Council to consider amending this resolution to include Resolution #03, adopted by Council in February 2010. He felt this would resolve the HNTB study issue.

Councilman Johnson made a motion to amend the Resolution as requested by the Mayor.

Following Councilman Albrecht taking a few seconds to review Resolution #03 of 2010, he asked if repealing this would send the matter back to the Traffic Committee, the Mayor stated that it would not and further stated that as it now stands Council still has a burden over this particular issue. The Mayor advised that he is asking that the resolution also be repealed in order to bring the issue back to the Mayor's office. Councilman Saddler advised Council that due to his employment with ODOT, he will abstain from voting on any matters concerning this issue.

There being no further questions or comments the roll was called. **VOTE: ayes 5 (Noel; Johnson; Basham; Albrecht; Haas) – nays 0 – abstain 1(Saddler) The motion carried. The resolution was amended.**

There being no questions or comments on the amended resolution the roll was called. **VOTE: ayes 5 (Johnson; Basham; Albrecht; Haas; Noel) – nays 0 – abstain 1 (Saddler) The amended resolution was adopted. RES #02-11**

Legislation being completed Councilman Albrecht noted that he had forgotten to make a motion to add, to this agenda, a resolution requested by the Mayor. Upon the Mayor acknowledging that the resolution could be considered at the next session, Council agreed to do so at their February 28<sup>th</sup> meeting.

#### **STATEMENTS OR REMARKS FROM CITIZENS ON ITEMS NOT ON THE AGENDA**

Peggy Burton, Health Commissioner advised Council that the Mayor had requested that Bobbi Brachett to speak this evening on a program about which the Health Department is excited. Mrs. Burton noted that as a Health Department they are supposed to monitor health trends in the City and implement intervention. She further advised that the Health Department is in the initiative stage of implementing a syringe exchange program and she wanted Council to be informed should any of their constituents inquire about it.

Bobbi Brachett – Health Dept. HIV Program stated that apparently the only place in Ohio with a syringe exchange program to be Cleveland. She pointed out that this program does not give anyone permission to “go out and do drugs” that their roll is prevention. She continued by saying that the time has come to be proactive instead of reactive in our present situation. Mrs. Brachett stated that we lead the State of Ohio in the Hepatitis C transmission rate. She further stated that we are 23.73% positive rate per 100,000 in population and that, on the State level, at any meetings on Hepatitis C, Scioto County leads with everyone else falling to the side. Noting that Hepatitis C is not a childhood disease, Mrs. Brachett said we now have children who have been stuck by improperly disposed of needles, suffering from this disease, which they will carry for the rest of their lives. She further noted the Health Department having reports of police officers; sanitation workers; home inspectors and the general population being stuck with improperly discarded needles. She again noted that the Health Department is not promoting the use of drugs. Mrs. Brachett stated that looking at Cleveland historically there program has not resulted in more crime or drug usage. She said the program would exchange needle for needle and felt this would be better than the needles being discarded in the parks and other public places and felt those discarding these needles are using the public’s desire to not get involved to their advantage.

Wayne Nichols – 2014-8<sup>th</sup> Street again expressed his hope that all the traffic lights that have not been in operation be turned on again. He claimed there to have been “too many” traffic accidents due to the fact these lights have not been operational and he did not care what DOT says.

Mr. Nichols claimed there to be a “crime wave” and “to many fires” for a community of our size. He said he wrote the Ohio Attorney General about his house fire and next year he is going to protest taxes by making only token payments of his taxes until the government gets things right.

Rebecca Steele, Community Development Director advised Council that the City’s Community Housing Improvement Program is about to begin. She noted the Mound Park area is being targeted. Mrs. Steele reported eight houses are scheduled for major repairs with 12 other houses schedules for minor repairs. She announced that people from that area will be able to pick up applications on Friday, February 18<sup>th</sup> from the hours of 9:30 to 4:30 at the Community Development Department where they will be able to speak with the case management personnel as well as the housing rehab specialist.

#### **Miscellaneous business and reports:**

##### City Clerk’s Report

1. Received from the Board of Elections that an estimated amount of \$17,423.48 will be withheld by the County Auditor from the monies payable to the City of Portsmouth during the fiscal year 2010 at the time of the first tax settlement in said fiscal year. The \$17,423.48 represents the City’s share of the cost of the November 2, 2010 General Election (\$1,126.80) and the cost of the December 7, 2010 special election (\$16,296.68).

The Clerk’s report was received, filed and made a part of the record, on a motion by Councilman Albrecht.

##### Mayor’s Report

1. Referring to an article in yesterday’s newspaper regarding the deficit not being as bad as expected, the Mayor cautioned that everyone needs to understand that we are in a dangerous situation. He noted that we want to push with what we set out to do in trying to generate revenues. He said he wanted everybody to know the importance of getting on board with what the City needs to do in addressing our

deficit situation., noting that at this particular point, going into 2011, we are looking at a 2.4 million dollar deficit. He acknowledged that regardless of how we ended 2010 we are still facing a difficult and dangerous situation in 2011.

2. The Mayor noted there to have been a lot of concerns about the City looking at and addressing certain issues and acknowledged there to be a lot of issues that the Mayor is looking at and we are moving to address a lot of different areas of concern both big and small issues. He said he cannot and will not go into details or speculate. He asked everyone to please be patient with him and his administration, stating that they are taking an aggressive approach to all these issues.
3. Announced having received an e-mail from the Emergency Management Director, Kim Carver advising of a National Weather Service Training for weather spotters on March 7<sup>th</sup> at 4:00 p.m. at the Southern Ohio Medical Center, East Campus Conference Room. He noted the training will last for about two hours and those who attend will learn how to spot and report severe weather in Southern Ohio to the National Weather Service. The Mayor said anyone who is interested should contact his office.

The Mayor's report was received, filed and made a part of the record, on a motion by Councilman Albrecht.

#### President's Report

1. Acting President, John Haas thanked the Mayor for calling a work session to go over the budget on Saturday. He reported the meeting to have begun at 9:00 a.m. and continued through to about 2:30 p.m. He acknowledged the Mayor and the Department Heads to have been kind enough to come in on a Saturday to give some of their time to go through about 90 – 95% of the budget. He also expressed appreciation to one member of the community who was also present. Mr. Haas described the meeting as being meaningful, helpful and productive. He expressed his hope that this will alleviate the necessity of having to do what they were forced to do last year with meetings after meetings that were lasting from 6:00 until 9:00 and 10:00 p.m.

The President's report was received, filed and made a part of the record, on a motion by Councilman Albrecht.

#### Miscellaneous business from City Council

##### 1<sup>st</sup> Ward

Councilman Johnson, referring to a special meeting of Council to submit to the electors a charter change regarding residency requirements for a candidate for Council and read aloud Mr. Haas' remarks from that meeting and stated that he had requested Mr. Haas to forward to him the list of cities he had found with five, six and seven residency requirements. Mr. Johnson acknowledged having received one with a residency requirement of five years, saying, "we all try our best to bring forth accurate facts and when my report was presented to you and I said I could not find another City with a five-year (*not discernible*), I made a mistake, there was one- New Orleans, haven't been able to find another. " Mr. Johnson continued, "As an attorney and as President of Council, the words and the facts you give Council carry great weight on this Council and I am concerned that without having done the research that you may have influenced the vote on this" Mr. Johnson continued, saying, "I'm sorry this occurred". Mr. Johnson cited an article in the Columbus Dispatch about Spartan Stadium and its history and felt the crux of the article was "rather negative about Portsmouth" by ignoring the fact that other cities of our size are facing similar problems. He advised that in response to the article, Jill McDonald, a local resident and employee in the Clerk of Courts, wrote an excellent letter to the editor of the Columbus Dispatch, which pointed out the positive side of our city. He thanked Mrs. McDonald for her response. Mr. Johnson, for those who did not see a copy of the Scioto Voice for January 27<sup>th</sup>, described a more than full-page article on the successor to Mitchellace, Sole Choice, as being "cool". He said the company is making a come-back and "becoming a force again".

##### 2<sup>nd</sup> Ward

Councilman Saddler reported having received an e-mail from Jim Saddler, past president of the Scioto County Memorial Day Celebration, extending an invitation to City Council for the first Scioto County Memorial Day Celebration to be held on the 19<sup>th</sup> of February at 1:00 p.m. Mr. Saddler advised that the organization, working with the City, is seeking donations from the public, veterans and civic organizations to make much needed repairs to the curb around Soldiers Circle at Greenlawn Cemetery. He noted the estimated cost to be \$7,000.00, which would be a savings to the City

3<sup>rd</sup> Ward Councilman Basham had nothing to report.

4<sup>th</sup> Ward Councilman Albrecht reported having received two complaints regarding trash that he turned over to the appropriated department and the concerns have been addressed.

Mr. Albrecht commended the Service Department for the work they have done repairing pot holes, noting that some were big enough to swallow a Volkswagen

5<sup>th</sup> Ward The Vice President had nothing to report from his ward.

6<sup>th</sup> Ward Councilman Noel stated that he has been very busy this past week, mostly receiving calls from constituents, noting they may be calls that have been received before “but haven’t gotten to them yet”.

He thanked the Health Dept. and Peggy “for the weeds that she cuts and so forth and so on”.

Mr. Noel said he has received several phone calls about the sewers. He also stated that he has a letter with him but has not yet had a chance to give it to the Mayor and proceeded to read the “highlights” from the letter. He said he was doing so in order to let it be known that the Grandview/Hilltop area is not the only place having sewer problems. Mr. Noel identified the writer of the letter as Wendell Skinner of Sciotoville whose problem seems to be because of the combined sewer. Mr. Skinner advised that the problem could be solved with “a flapper”, however Mr. Noel did not believe this to be the only problem due to other complaints he has received. Mr. Noel advised that if this problem is not addressed by the City, Mr. Skinner will take action to resolve it.

The Auditor had nothing to report.

The Solicitor extended condolences to Curt Clifford and his family whose daughter, Courtney passed away this past week after a courageous battle with ovarian cancer.

The meeting adjourned at 6:50 p.m., on a motion by Councilman Johnson.

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City Clerk

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Acting President of Council