

## MINUTES – REGULAR SESSION

### PORTSMOUTH CITY COUNCIL MEETING

Monday, August 22, 2011

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on, Monday, August 22, 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, Michael L. Jones and City Auditor, M. Trent Williams

On a motion by Councilman Albrecht, Council dispensed with the reading of the Journal for the regular session of August 8, 2011.

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 **first reading** to an ordinance to amend Section 339.02©(4) of the codified Ordinances of the City of Portsmouth, Ohio – Trucks and Truck Routes – Truck Routes Designated as recommended by the Traffic Commission.

Councilman Albrecht moved this constitute a first reading.

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

The Clerk gave a **first reading** to an ordinance to amend Section 351.20 of the Codified Ordinances of the City of Portsmouth, Ohio – Parking Generally – Two Hour Limited Parking as recommended by the Traffic Commission.

Councilman Johnson moved this constitute a first reading.

Councilman Johnson advised Council that he had three amendments but first wanted to eliminate, in Section 351.20 (a), the words “in any one parking place” based on the discussion of this item during the Mayor’s conference meeting, two weeks ago.

The Acting President felt that by eliminating “in any one parking place” in that paragraph it would indicate that you could not park more than two hours total consecutive time on any of these streets, which he said sounded like that if you were anywhere in the downtown for more than two hours at a time..... Mr. Johnson interrupted saying, “On the streets, yes sir”. Mr. Johnson continued, saying “We have three and half parking lots that were designed to (*not discernible*) that”. He said, “this was to encourage people to utilize the parking lots and to free up the streets for, not only businesses but a lot of the streets are residential and the residents were very tired of having employees parking in front of their and blocking all their parking space”, saying “that’s how all those ordinances developed”. Councilman Albrecht stated it to be his belief that this cannot be enforced and he felt that in order for it to be enforced the parking places would have to be marked. Mr. Albrecht noted that even, according to the proposed amendment, the residents who live in the area would not be allowed to park there of the evening because it would violate the two-hour within a twenty four-hour period. He also advised there to be various activities, such as River Days, hopefully boat races; fireworks; car shows that would all be in violation of this ordinance. Mr. Albrecht further advised that he is against it. Councilman Johnson claimed that in the past whenever events were occurring a parking holiday was declared. He stated this to have also been done when the City was using parking meters. He claimed this to not be unenforceable saying it was enforced for many years on these terms. He stated that when the Emporium opened they had problems with parking and the process was that they would call the Chamber of Commerce, who in turn would call the police department, saying the Chamber served as their buffer for tracking the number of complaints that were handled, claiming that to be the procedure. He also claimed this to be the practiced procedure back when we had a Merchant’s Association. Mr. Johnson stated, “The wording has gone back for years and if there was an occasion a parking holiday was declared”. Councilman Basham said he felt that between the Police Chief and the Solicitor, one of them could advise Council as to whether or not this ordinance is enforceable. The Solicitor said he felt this issue to be, whether or not we have the man or woman power to enforce it, which he said he would have to defer the question to the Mayor and the Chief of Police. Mr. Johnson said he felt the issue before Council is the definition

of “parking place”, claiming that any place on the street that is not marked cannot be considered a “parking place”, saying there is no definition. The Solicitor agreed with Councilman Albrecht, saying he believed that potentially tires would have to be marked and keeping track of when a car was parked at a particular spot. He said he was not saying the ordinance is not enforceable but he felt it would potentially cause some issue for the police department in terms of actual enforcement. Councilman Johnson claimed the problems the code enforcement officer, who was hired in 2006, had was that all anyone had to do was move their vehicle ½ and inch to be considered parking in a new space. He also claimed the attorneys in the downtown to have done that and described the experience as “frustrating”. He reminded everyone that in March 2006 there were petitions with over 360 signatures presented to Council “begging them to enforce the parking downtown because of how it effects business”. In response to Mr. Johnson’s remarks, Councilman Albrecht pointed out the fact that City Council is not the one that enforces the laws, saying, “All we can do is pass an ordinance and then it is up to the police department to enforce it”. Mr. Albrecht also pointed out the fact that Council cannot make anyone do anything and described the proposed ordinance as a “waste of time” unless there are actually marked parking places. Councilman, acknowledging Council to be a legislative body, said this was the extent of what Council can do but as a former downtown business person, he felt it important for Council to indicate to our businessmen, whether we are or are not interested in parking for further development of businesses in the downtown. He claimed that the last tenant he had left because they complained about the parking, saying “there was never any parking on Chillicothe Street” and claimed the half parking lot is always full. He also claimed that everyone here knows that you can check in front of certain buildings downtown and it is the same attorneys and business people who are parking on the streets all day. Mr. Johnson stated, “If that is what Council and the City desires then let us communicate that so businesses don’t waste their time and try to open a place on Chillicothe”. The Acting President indicated that, as a lawyer, he parks in the City parking lot behind PNC Bank. Mr. Haas noted that on the other side of the coin, if someone came to him and wanted to challenge a parking ticket and they can show they moved their car two inches, whether or not this language is in there, the two hours consecutive time and they moved their car two inches, it could be argued that was a consecutive time. Mr. Haas said that he did not think taking that particular language out of the ordinance would have any effect on it. The Mayor, saying he appreciated the debate and acknowledging the need for enforcement, reminded everyone that this ordinance is specifically about limiting parking on Gallia Street in front of the school and the library. He noted that the public cannot get to the library because of employees parking on the street in front of the library. The Mayor stated that if this ordinance is passed as is, everything will be done on the administrative side and on the side of the police department to do everything they can to enforce the limited parking. The Mayor reiterated the fact that this ordinance is specifically for the library and the schools in the Gallia Street area. Councilman Johnson stated that in 2005 the business people in the downtown were advised by the young lady that was hired for that position that she was not allowed to ticket anyone who moved their vehicle an inch or ½ inch because that had become a new parking space. He said, as a result, the enforcement officer wrote tickets to those who parked to far from the curb but was threatened by a motorist when she attempted to ticket him for the violation. He claimed this created a major problem because the enforcement officer felt she could not write tickets and he believed that was what was conveyed to the businesses. The Acting President advised Mr. Johnson that he did not disagree with him and he did not believe the problem to be the ordinances and felt to remedy the issue there needs to be designated parking spaces marked on the streets where there is limited parking. He described this as a “capital improvement type problem” than the ordinance itself. Mr. Haas said he also understands what the Mayor is saying about the change in this ordinance to direct people from parking in front of the library during their business hours.

There being no further questions or comments the roll was called. **ayes 4 (Saddler; Haas; Noel; Johnson) – nays 2 (Basham; Albrecht) The motion carried. The ordinance was amended.**

Councilman Johnson made a motion to amend Section 351.20 of the codified ordinances by eliminating subsection (b).

Councilman Johnson noted the position of a part-time employee has not been filled since 2006, (*further comments by Mr. Johnson were not discernible and could not be transcribed*).

The Clerk advised that if that position is eliminated by this amendment, it will also be necessary to amend the Salary Ordinance in two places. Councilman Johnson claimed this position to have been eliminated in the budget. The Clerk advised that the position was not eliminated from the Salary Ordinance. In response to Mr. Johnson suggesting everything be amended, the Clerk further advised that the Salary Ordinance would have to be placed on the agenda at a future meeting. In response to the Acting President, the Clerk concurred that while the position was not funded during the budget process, it was not eliminated. Councilman Albrecht said he did not see where it hurt anything to just leave it the way it is, saying that when funding is available a person can be hired for the position without having to pass another ordinance recreating the position. Councilman Johnson stated, “I’m a stickler for, if I read something I expect it to be done and as long as this is here I would expect it to be done”. He continued to claim that the position was eliminated during the budget process and he felt it should be followed through by eliminating the language and the salary indicators as noted by the City Clerk. He claimed the first step to have already been taken and this would be the second step, saying if the position is needed and we have the money then passing another ordinance would be an easy thing to do.

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

There being no further questions or comments on Councilman Johnson’s earlier motion for a first reading the roll was called. **VOTE: ayes 5 (Haas; Noel; Johnson; Saddler; Basham) – nays 1 (Albrecht) A first reading was declared.**

The Clerk gave a **first reading** to an ordinance to amend Ordinance No. 36 passed July 25, 2011 to amend the 2011 Income Tax Capital Budget to appropriate an additional 432,298 from the unencumbered balance of the Capital Improvement Fund No.301 to fund a Building Maintenance/Miscellaneous Line within this year's CIP.

Councilman Albrecht moved this constitute a first reading.

Councilman Johnson claimed that in a lot of people's mind the "Annex Building" is the Marting's Annex Building and asked if this ordinance was referring to the Health Department Building with regard to the roof repair and HVAC. In response the Mayor advised Mr. Johnson that it is the Health Department.

There being no further questions or comments the roll was called. **VOTE: ayes 6 – nays 0 A first reading was declared.**

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

Barbara Howard, representing SOLACE (Surviving Our Loses and Continuing Everyday) said she has been living in the City of Portsmouth all her life and that she has never seen the City in as bad a shape as it is today "crime wise". Ms. Howard claimed residents no longer feel safe in their homes and announced that SOLACE has taken on the issue of seeing that the Police Department has a "safe place to work". She said they would be taking on whatever actions are necessary to accomplish this "so they can focus on addressing the horrible crimes that are about to be outlined". Mrs. Howard continued by quoting various crimes that have occurred throughout the City and County over approximately the past five years and how both, the City and the County, are being rated in comparison to other cities and counties. She further claimed citizens to be complaining "about the lack of a police department". Noting these statistics, Ms. Howard asked Council, "Do you really want to cut our Police Department manpower?" She further asked, "Is it really a good idea to have our Police Department spread all over the town?" She continued saying, "There appears to continue to be roadblocks and obstructions put up to try to keep our Police Department from operating effectively". She continued by stating how the department was divided and the different places various employees were located. She also claimed this to create communication problems between divisions. Ms. Howard, claiming there to be a solution, noted the City owns the Marting's Building and further claimed the City to be "sitting on a million dollars" that could be used to put the police in their own building. She said, "Portsmouth City Council has proved they can (*not discernible*) by the Mayor and City Council body" and continued by quoting the purchase price of the former Lute Plumbing Building and the former Gas Company Building, which she said could be moved into within two to three weeks. With regard to "fixing up the City Building", Ms. Howard felt it was too costly, too dangerous and too timely. She claimed it would also, "entail removing demolition, heating and (*not discernible*) spreading asbestos throughout the system". She advised Council that they could refer to a complaint that was recently filed by the Chief of Police on issues surrounding the Municipal Building. Ms. Howard described the building as being "dangerous even to the current workers here not just the ones that are housed in the basement". She further stated, "This building is contaminated, even for myself standing right here before you", she continued, saying, "the City has known about this long before it became a crisis and a health issue".

Frank Thompson – 2810 Brant Avenue stated that he was proud of the City and things that have been happening in the City, especially over the last couple of years. Mr. Thompson felt there to have been an effort by a "whole lot of people" to make things better here. He advised one of the big things of concern is crime. Mr. Thompson asked Council to "please" give the Police Department a building and to not cut any police services, saying these services were needed. Mr. Thompson recognized the officials at the table as being a "big part" of building up the community but felt it to be "a crime" that we don't have (*not discernible*).

From the audience, Ms. Howard spoke up to criticize the company with whom the City contracted to clean up the basement, claimed that when they were moving boxes into the Martings Building, where SOLACE was doing a news interview with Channel 8, were very rude to them. Ms. Howard suggested "you might want to check those guys out".

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

##### City Clerk's Report

1. Received, on 8/15/11, from the Auditor, the following reports for the period ending 7/31/11:
  - Combined mtd/ytd expense report
  - Mtd/ytd revenue report
  - Combined mtd/ytd fund report
  - Mtd bank report
  - Appropriation transfer from transacting listing
  
2. Received a notice from the Ohio Division of Liquor Control of a request for a stock transfer from:
  - West Miller Inc.
  - DBA Dakotas Roadhouse
  - 1619 Chillicothe St.

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

### Mayor's Report

1. Expressed his appreciation to SOLACE for sharing their concerns, saying he was very much a part of the action team that addressed the drug issue, at the very beginning and still considers himself a member of that team. The Mayor said he understands what they are experiencing and their issues but as of right now the City is doing all that it can to get the Police Department back into the building. With regard to the remarks about this building not being suitable, the Mayor advised SOLACE that we all agree with them. He acknowledged the poor condition of the building but noted it to be what we have to work with until we can put together a permanent solution. He further acknowledged the importance of bringing the Police Department back into the building and reported this to be something he has been trying to do since he became Mayor eight months ago. He acknowledged there to have been roadblocks and advised that the City has been dealing with those roadblocks and attempting to eliminate them. The Mayor further reported the City to be in the process of clearing and cleaning the basement so the Police Department can move back into their space. He noted this move will be temporary until all of the employees can be moved to a location that of which we can all be proud to call home for the City offices. He asked SOLACE to "bear with us" while we work to prepare the facilities ready for the Police Department and expressed his hope that they will be able to move back in before the anniversary of their exodus. The Mayor acknowledged this may not be the answer that everybody wants but it is the best answer for the short term and he wanted to insure everyone that an effort is being made to return the Police Department back to this building. In response to Ms. Howard, again speaking from her seat in the audience, saying they were worried and just wanted to make sure things are safe, the Mayor again stated that the City is taking every precaution to make sure everything is being done by the book and in order. He also advised that once the cleaning and clearing is finished, there will be more samples taken and testing done. As Ms. Howard attempted to continue the conversation; the Mayor apologized and advised her that this is not a time for questions and answers.
2. The Mayor announced there will be a rededication of the Branch Rickey Mural at 4:00 p.m. on Sunday, August 28<sup>th</sup>, in front of the Mural, on Front Street. The Mayor showed everyone the street sign that will designate, in an honorary capacity, Front Street as "Branch Rickey Way".

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

### President's Report

1. The Acting President thanked the members of SOLACE and Mr. Thompson for being present this evening. He advised them that we all understand and are acutely aware of the issues with respect to the Police Department. Mr. Haas expressed his hope that we do have a resolution to that issue in the near future, saying it bothered him to hear the crime statistics but also to hear remarks about the City's financial condition and "a pot of money that we are sitting on" as well as that we are cutting police officers. Mr. Haas said he is not sure from where all that is coming and advised the members of SOLACE that if they would like to speak with him following this meeting he would be happy to apprise them of his understanding of the situation with the City's economic standing and also whether or not her personally, as a member of Council, am in favor of cutting any police officers.

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 expressed his appreciation to SOLACE and Mr. Thompson for their presence this evening. He said he understands their concern because he is the one who is proposing the elimination of staffing requirements for the Police and Fire Departments and informed those present that is an issue that cannot be changed by Council but must be determined by the electorate. He asked that they understand that his recommendation has nothing to do with police and fire departments themselves but has to do with the number one priority of City Council, which he identified as "our financial stability". Mr. Johnson acknowledged the City to not be financially stable, noting a deficit of over \$1,000,000.00. He explained the reason for "holding onto the CIP" is to perhaps have that money transferred to the General Fund to balance our budget. He acknowledged that it would be up to the Court as to whether or not the City will be allowed to do that. Mr. Johnson said he has yet to find another city in Ohio or anywhere else that has a minimum staffing for their Police and Fire Departments. He said this staffing issue creates a problem for the City, noting that since these two departments can't be cut, it is necessary to cut every other department, and provided examples of those departments and the services that they can no longer provide. He reiterated his remarks with regard to the reasons for his proposal and

Council's responsibility to pass a balanced budget. He reported the fact that, earlier this year, the Mayor requested a 20% cut in all department budgets and while all the other departments did that the Police and Fire did not because they would be under minimum staffing. Mr. Johnson also pointed out the fact that the electors of the City have, twice in the last nine years", spoken loudly by denying an income tax increase that would have supported (*not discernible*) in the Fire Department. He noted that even though the last one lost by only two votes, it was still a defeat. Acknowledging an increase in the income tax will be on the ballot this November, Mr. Johnson advised that if anyone really wants help of Police and Fire Departments, to go out and campaign for the passage of this income tax increase. He further acknowledged that the City has not had a tax increase since 1986, noting that costs have increased but revenues have not.

Mr. Johnson advised the Mayor that he is still waiting for information from AMERESCO, noting the last report we received from them was in 2010 and further noting we should have received another report by this time. He reiterated remarks he has previously made with regard to the unacceptability of their 2010 report.

Mr. Johnson inquired of the Mayor as to how the City is "coming along" with regards to the floodwall in conjunction with New Boston.

Acknowledging the receipt of a memo from the Mayor dated August 18<sup>th</sup>, regarding the water filtration rehabilitation project, Mr. Johnson, after summarizing the contents of the memo expressed his concern that the PLA is not going to be utilized, saying "that decision has to be made first, not after the fact". He expressed concern that the City's bidding process is getting to the place where it is almost impossible for anyone to bid on this project. Mr. Johnson claimed that some contractors seem to think the City makes up rules as they go along and they cannot depend on the process.

2<sup>nd</sup> Ward

Councilman Saddler thanked SOLACE and everyone else in the audience for being in attendance this evening. He echoed the fact that the City does not have enough money and encouraged everyone to vote and work for the income tax increase. He said the funds the City has is not being misused but it will only go so far. Mr. Saddler stated that we are living on 1940s and 1950s income with 21<sup>st</sup> Century costs.

Mr. Saddler thanked the Service Dept., the Service Director and the Rife Chief for addressing a couple of complaints in his ward. He advised anyone in his ward that has any complaints to call him.

3<sup>rd</sup> Ward

Councilman Basham thanked SOLACE for being in attendance and voicing their concerns. With regard to the \$1,000,000.00, he advised them that Capital Improvement dollars cannot be used for salaries. He acknowledged that the City could purchase property; however, he advised that the City cannot afford the utilities and maintenance of another building. Mr., Basham said he would like to see everyone in this building, including the Police Department, to be in a "safe working environment". He encouraged passage of the tax increase, which would, at least, keep our fire and police staffing levels where they are. Acknowledging the charter requires a first draft of the budget be presented to Council by mid November, Mr. Basham asked the Mayor to provide Council with a rough draft of a balanced budget in September thus showing the citizens what they will be losing, if they vote "no" to the tax increase in November. He noted that without the increase that will be all the City can afford.

4<sup>th</sup> Ward

Councilman Albrecht thanked SOLACE and Mr. Thompson for their attendance.

Mr. Albrecht disagreed that the Police and Fire Department's had not done their part with regard to the budget, saying everyone did as much as they could. He acknowledged the Fire Department to have had a lot of retirements and have not yet filled those positions. He also acknowledged both departments to have also cut other line items in their budgets. Mr. Albrecht expressed his hope that the electors will pass the tax increase so the City does not have to go through this again.

5<sup>th</sup> Ward

Councilman Haas echoed Mr. Basham's remarks regarding a budget showing the jobs that will be lost, if the tax increase does not pass. He suggested that the Mayor, along with the Auditor, get together. He said he reviewed past requests for an increase and noted that the things for which they needed additional dollars have since been discontinued and everyone is working with skeleton crews. He felt a balanced budget will put things into terms that everyone will understand.

6<sup>th</sup> Ward

Councilman Noel thanked all the citizens in attendance and advised that whoever takes his seat next year will take on this problem. He noted that person will have to work with a deficit budget and will have to cut forces or the State will come in a do it for us. He expressed his sympathy to the upcoming Council. He reported his ward to have had good coverage by the Police Department and especially from the Service Director.

Neither the Solicitor nor the Auditor had anything to report.

Councilman Albrecht made a motion to recess into executive session to discuss applications for the City Clerk's position.

The roll was called. **VOTE: ayes 6 – nays 0 Council recessed into an executive session at 6:56 PM.**

Council reconvened at 7:15 PM. Roll call showed all those previously in attendance to be present.

The meeting adjourned at 7:16 PM, on a motion by Councilman Johnson.

---

City Clerk

---

Acting President of Council