

MINUTES – REGULAR SESSION**PORTSMOUTH CITY COUNCIL MEETING**

Monday, June 11, 2012

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on, Monday, June 11, 2012 at 6:00 p.m., in the Council Chambers of the Municipal Building.

President of Council, John Haas called the meeting to order. A moment of silent prayer was observed followed by The Pledge of Allegiance to the Flag.

Roll Call showed the following members to be present:

Rich Saddler	2 nd Ward
Nicholas Basham	3 rd Ward
Jim Kalb	4 th Ward
John Haas	5 th Ward
Steve Sturgill	6 th Ward

Also present were Mayor David A. Malone and Solicitor, Michael L. Jones.

Councilman Johnson's absences were excused, on motion by Councilman Saddler.

On a motion by Councilman Basham, Council dispensed with the reading of the Journal for the regular session of May 14 and May 24, 2012.

Addition of
agenda item
"7g" and "7h"

Councilman Basham made a motion to add an item to the agenda regarding CDBG.

The motion carried viva voce. **VOTE: ayes 5 – nays 0 The agenda item was added as Item "7g"**

Councilman Basham made a motion to add an item to the agenda regarding adopting Codified Ordinance replacement pages.

The motion carried viva voce. **VOTE: ayes 5 – nays 0 The agenda item was added as Item "7h"**

STATEMENT OR REMARKS FROM CITIZENS ON ITEMS ON THE AGENDA

Austin Leedom – 1521 5th Street – Mr. Leedom stated that he wanted to speak about items that are on the agenda. He stated that there are many items on the agenda that have been taken into secret meetings. This is a violation of our Charter, a violation of order from the Common Pleas Court. There will be no secret meetings, if secret meeting continue to persists, we will take court actions and go to the streets with petition to change the council.

LEGISLATION

The Clerk gave a **third reading** to an ordinance enacting a new Chapter entitled "No Texting While Driving", of the codified ordinances of the City of Portsmouth.

ORD #12-24
Texting while
driving

Councilman Basham moved to pass this ordinance.

Councilman Kalb stated that he looked at different ways to amend this ordinance and what he was looking to do would require a whole new ordinance. During the last meeting he had moved to amend this ordinance and his vote will be against this due to the way that it is written and does not take care of what we are trying to take care of.

President Haas wanted it known that this ordinance as to his understanding mirrors the Ohio State ordinance and that if our local officers can cite a City Ordinance then the fine money will state with the City as opposed to going to the State. He believes that this is a strong consideration as to why we should pass this ordinance.

Councilman Basham agreed with Mr. Kalb and that he is not really thrilled with the way that the ordinance is worded and agrees with much of what Mr. Kalb said at the last meeting. However if the City does not have one in place, then any fines will go to the state instead of saying here in the City.

Mr. Kalb clarified that by passing this ordinance it does not prevent future changes or replacement of this legislation.

President Haas advised that either way it can be changed later.

There were no further questions or comments. The roll was called. **VOTE: ayes 4 – nays 1 (Sturgill) The Ordinance was passed. ORD #12-24.**

The Clerk gave a **third reading** amending Chapter 169 - Employees Generally of the Codified Ordinances of the City of Portsmouth enacting Section 169.25 entitled Veterans Preference.

**ORD #12-25
Veterans
Preference**

Councilman Kalb moved to pass this ordinance.

There were no questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 The Ordinance was passed. ORD #12-25.**

The Clerk gave a **second reading** of an ordinance to amend Section 339.01 of the Codified Ordinances of the City of Portsmouth, Ohio – Trucks and Truck Routes – Truck Routes Designated.

Councilman Basham moved this constitute a first 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** of an ordinance authorizing the appropriation of Federal FEMA Funds in the amount of \$9,878.64 into Sewer Maintenance Materials and Supplies Fund No. 621.777.5300 and the appropriation of \$25,944.03 into Flood Defense Contractual Fund No. 265.225.5299.

**ORD #12-26
Sewer
maintenance
appropriation**

Councilman Basham asked the Mayor if this is something that could be expedited.

Mayor Malone advised that yes it can.

Councilman Basham move to have the rule requiring three reading be waived.

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

Councilman Basham moved to pass the ordinance.

There were no questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 The Ordinance was passed. ORD #12-26.**

The Clerk gave a **first reading** an ordinance authorizing an appropriation transfer in the amount of \$18,720 from PREV-Payroll fund No. 252.444.5111 to PREV-Mat/Supplies Fund No. 252.444.5300.

**ORD #12-27
Health Dept
transfer of
funds**

Councilman Kalb stated that this is about the same as the last ordinance, just re-appropriating funds that have already been granted. Councilman Kalb move to have the rule requiring three reading be waived.

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

Councilman Kalb moved to pass the ordinance.

There were no questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 The Ordinance was passed. ORD #12-27**

The Clerk gave a **first reading** of an ordinance an ordinance authorizing an appropriation transfer request in the amount of \$700 from HLTH-Payroll Fund No. 101.440.5111 to HLTH-Feline Housing Fund No. 101.440.5238.

**ORD #12-28
Health Dept
funds transfer
feline housing**

Councilman Basham move to have the rule requiring three reading be waived as this is only a transfer.

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

Councilman Basham moved to pass the ordinance.

There were no questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 The Ordinance was passed. ORD #12-28**

The Clerk gave a **first reading** of an ordinance authorizing the submittal of a FY2012 Community Development Block Grant (CDBG) application and accepting grant and obligations, if funded, and declaring an emergency.

**ORD #12-29
CDBG grant
funding**

Councilman Basham asked beings that this is being declared and emergency do they need to move to have the rule requiring three reading be waived.

Councilman Basham move to have the rule requiring three reading be waived.

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

Councilman Sturgill asked for an explanation of what this is.

Mr. Malone advised that that was his intention once the motion for passage has been presented.

Councilman Basham moved to pass the ordinance.

Mr. Malone stated that this is an emergency in the fact that the CDBG did not get the ordinance to the Mayor's office until this past Friday. He also noted that per Section IV this application must be into the state by June 22 which is before the next Council meeting.

Councilman Sturgill asked what this is for.

Mayor Malone advised that is for the CDBG, housing tear down in the Second Ward, fence repair and some of the CHIP program.

Mr. Sturgill asked if this is carry over from the funds last year.

Mr. Malone advised that this is carry over from 2011 plus 2012 year. He state that as Council may remember the 2011 paper work was not done correctly and therefore it was recommended that the City carry over the 2011 into 2012 and combine them.

Mr. Sturgill stated that according to what the Mayor is stating is that the information was not obtained until last Friday.

Mr. Malone advised that as far as the ordinance yes. The CDC (Community Development Director) which is a contract company puts together the ordinance each year and it was just given to them on Friday.

Mr. Kalb advised that over the years this happens quite often where the City is late getting the papers, especially grant applications.

Mr. Sturgill stated it sounds like the information is coming from CDC late not the state.

Mr. Malone advised that is correct.

Mr. Sturgill stated that this has probably been a requirement for some time.

Mr. Malone advised that Mr. Sturgill is correct that it is the CDC and that he will encourage Tracy to speak with John Cleek of the CDC, as there will be other grants that he will be involved with, that they will do all that can be done to have the proper ordinances done in early enough time to prevent asking for emergency passage.

Mr. Sturgill asked how long the City has been working with CDC.

Mr. Malone advised approximately 10 years which Mr. Kalb confirmed.

Mr. Sturgill asked if it is the same problem every year.

Mr. Kalb advised that yes it is.

Councilman Saddler advised Council that with a lot of contractor when you give them a deadline, they will wait until that last day most generally. Mr. Saddler advised that everything he has been involved with through his employment...

Mr. Sturgill stated that you only let them do that once.

Mr. Saddler continues by stating that if the law states that there is a certain deadline, example at 4:00 on that particular day, as long as the contractor is there by 3:59, they are in compliance. He cited that maybe that is what is going on in this case.

Mr. Malone advised that they will have a talk with them and see if they can speed up the process or ensure that the ordinance is received to give a minimum of two or three weeks for Council to review.

There were no further questions or comments. The roll was called. **VOTE: ayes 4 – nays 1 (Sturgill) The Ordinance was passed. ORD #12-29.**

The Clerk gave a **first reading** of an ordinance to revise the Codified Ordinances by adopting replacement pages thereto and declaring an emergency.

Councilman Kalb move to have the rule requiring three reading be waived.

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

Councilman Kalb moved to pass the ordinance.

Mr. Kalb commented that these are the regular replacement pages that are being put into the Codified Ordinance book. This is done about every year.

Mr. Sturgill asked who decided whether something like this is an emergency.

Mr. Haas advised that we decide it is when we waive the rules requiring three readings.

Mr. Sturgill questioned that we do and why are we calling it an emergency if they are just replacement pages.

City Solicitor Michael Jones, elaborated that if there are any changes in the law or in our ordinance, we send that information to a company who actually updates it. Any changes that happen in the last year we can also site under our ordinance, which generates income for the City. We are just trying to ensure that we are up to date and have the information out as quickly as possible. (Clarifying with the City Clerk that the information was received in the last few weeks.), as soon as we receive the updates from the company we provide it to Council.

Mr. Saddler stated that sooner we get it enacted the sooner we can enforce it.

Mr. Haas advised that it is enacted already but if anyone is looking at the web it is updated.

There were no further questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 The Ordinance was passed. ORD #12-30.**

STATEMENT OR REMARKS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Preston Smith 1115 15th Street – Mr. Smith stated that he had an incident at 1120 16th Street, this was property that was a victim of arsine. Approximately the 29th or 30th of last month there was property stolen from this residence. He went to the scrap yard to see if he could find the missing items. He was told he could receive any information unless there was a report filed. Mr. Smith stated he made a report with the police. The office that took the report was very nice. He took the report back to the scrap yard and found the material there. The guy at the scrap yard told Mr. Smith to give him a day or so and he would let him know who brought it in. As of yet the police department has not done anything. He went back to check with the police and was told that the investigation was closed. It was closed without being investigated. In the mean time he went back to the scrap yard again and no one from the police department had been down to check. The scrap yard had all the information. Mr. Smith does not understand why this was totally neglected. Mr. Smith continued that last week there were other items stolen from the same location. He is going to assume by the same people. He went Friday and gave another report which he got the copy of today. He knows who did this, the police ask if you have any information to bring it in, but what is the use if you bring it in if they do not do anything about it. He has three choices, go to the States Attorney General, to the news channel 3 or 13 or come to Council. His first step is to come to Council. He is sure that this is news worthy to where you have the information and the police does nothing with it. He wants to have these people that went on to his property prosecuted. If he does anything to them then he will be facing charges himself. He is trying to do the right thing and he does not know what else to do other than going to the Council, the news or Attorney General.

Terry Ockerman – 840 Gallia Street – Mr. Ockerman appreciates that fact that Council supports downtown businesses. There is a lot going on, the new Beauty College, another restaurant, up to 16 residential units coming downtown and he really appreciates that fact that our city needs to be able to work and live downtown. Mr. Ockerman stated that in his opinion the Columbia Theater is just a flawed business plan. He stressed that he speaks for no one but himself based on his experience living downtown. He stated it is irrelevant that it was closed before and is open now, he does know that when it was closed there was not any problems that he was aware of. His question is that it was taken from closed to open air, was there any research done. Maybe there was some research but he really does not know. Mr. Ockerman sited that packets that Council was given, stated that if you Google “amplified noise” there are probably 400 articles regarding the issues going back 10 years. He does not know if that was looked at or there was any research done but when you are firing up a concert and he is told that you can hear it in the east end, you can’t do a conference call in the National City building, he thinks that there is a business flaw there somewhere. If you look under the noise and statutory, your rights under noise and statutory, it is old but it is there and it is there for a reason. What constitutes a nuisance, its noise that is the cause of a complaint; it must be or is likely to be detrimental for one’s health, is or is likely to interfere with ones on personal enjoyment of their own property. He said this may have been looked at and addressed he does not know. If you look under the EPA noise pollution, the traditional definition of Noise is unwanted or disturbing sound. Sound becomes

unwanted when it interferes with normal activities such as sleeping, conversation or disrupts or diminishes ones quality of life. Though for some the constant or escalated forces of sound can often be considered an annoyance. This annoyance can have major consequences, primarily to ones overall health. Then he states it goes into the health, most of this the EPA has transferred the responsibility to the State and local levels. It has been out there for a while and he does not know if this was all looked into properly. It is just the fact that, as per his understanding, 11:00pm is the cut off. He hopes that at least that can be put into effect so tenants can be advised when the music will stop. Until this get figured out, what are the decimal levels going to be? Or how long? He does not know if any of this has been done and if it has we would like to know that that research has been checked into. No one want to shut it down, let's just do it right. Was there any sound engineering put into the project? Is there anyone that has given an estimate or been hired to check into this? It is a standard thing with outdoor arenas. (Five minute bell rang)

Mr. Ockerman requested a few more minutes.

Mr. Haas advised that it would have to be a vote.

Mr. Kalb jokingly said he voted no.

Mr. Ockerman stated that it was ok and that there was a lot more in this and he will address Council next week in fairness to everyone. He just wants to make sure that due diligence was done. What he is talking about is 10 years old, 10 years ago this stuff getting out of control was a failed business plan then and Polaris was closed for this reason. He will address more issues next week.

Shandra Brown -840 4th Street – she stated that she lives by the Columbia and she wanted to ask if Council had to live there, which she has for 10 years, she has been in business in that two radios block for 22 years now. She has raised her son there and has never allowed him to come in with his music like that, he is 19 a teenager or roommates it makes no difference. To her it is common courtesy, it is intrusive, a building flaw a business plan flaw, to her is it common courtesy. It is no different than her going to her collage aged student that lives next to her, at 2:00 am and asking them to turn the music down because she can hear it in her bedroom. The first night that they (Columbia) was open at 11:30 at night the music was so loud that she called two city Councilman and got them out of bed. They were in bed asleep and she could not go to sleep due to the music. She had to work at 6 am the next morning. She is just asking for common courtesy. She wants more than anyone business downtown as she is downtown herself, but she is considerate as she lives there. What is there 600 voters in that Ward alone and we are told that it is not residential. Look at those apartment buildings around, the older people that live in Alexandra house that have lived there for years. They can't go anywhere else. She could hear the music from the Columbia Theater on the back side of her house by the college over top of her TV. Right is right and wrong is wrong, that is all she is asking, she wants the music hall there if it is going to bring people downtown just control the sound, the collage does, why can't they. That is all she asks.

Michael Fitch – 307 Chillicothe Street – Mr. Fitch wanted to discuss the same thing. Mr. Fitch waived a piece of paper stating who ever gave this permit did not exercise due diligence allowing an open air concert place in downtown Portsmouth. He gave an example of older citizen that can't pay an electric bill and keep their air conditioners running and pay for their prescriptions. So they have to make the choice, to leave their windows open and they have to hear this. He made the example that Polaris got closed for the same thing.

MISCELLANEOUS BUSINESS AND RPORTS:

City Clerk's Report – noting to report at this time

Mayor's Report

1. The Mayor update Council, in April or May of last year all the cars in the City were grounded as a result the FOP did file a grievance law suit and through the process there was an answer from the arbitrator a few weeks ago. It was found that the City did not violate any rights or agreements. The binding arbitration decision was for the City.
2. Mr. Malone wanted to congratulate the Wheelersburg Baseball team for winning the State Championship. He understands that they are not in the City proper but it is a county team and he wanted to let them know that we congratulate and support their efforts.
3. Mr. Malone advised that during the next Council meeting he may not be in attendance, due to another engagement out of town and requested that absence be excused.

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

Presidents Report – nothing to report at this time.

MISCELLANEOUS BUSINESS FROM CITY COUNCIL

2nd Ward Councilman Saddler has nothing to report at this time.

3rd Ward Councilman Basham stated to the Mayor that he receive a few calls last week regarding the Columbia. His response was that there is a noise ordinance and that they should call the police. The answer that he received from the callers was that they did and the police is telling everyone to call the Mayor's office. Mr. Basham called dispatch to see what was being said and receive the same statement that they were not sure how to enforce and to call the Mayor's Office.

Again addressing the Mayor, stating that they have spoke about this before, there is yard waste in a City Right of Way on Sunrise and 23rd. The neighbors in the area have all promised to cut the grass and maintain the area if the yard waste is cleared out. This is the fourth week he has been trying to get this resolved.

Mayor Malone asked where it was located.

Mr. Basham advised that it is behind the houses on 23rd Street but it is on Sunrise. On the corner of Sunrise and 23rd. Addressing the Mayor, he knows that it is not the Mayor's personal job to do that but we are on week four.

Mr. Basham addressed all of Council, stating that he went to the transfer station last week and watched it in action. He encouraged everyone to check it out. It is slow, it is not the guys that are working that is the problem. He made it there is time to see City garbage trucks, a guy with a trailer full of shingles and a few business developer trucks. Mr. Basham has spoken to the Mayor about this; we have to find an answer. When you go there you just watch it work and it will answer all of your questions.

4th Ward Councilman Kalb does not have a report at this time.

5th Ward President Haas does not have a report at this time.

6th Ward Councilman Sturgill addressed the Mayor requesting an update on Rose Street Park stating that he is confident that the Mayor will have a report for him. He stated that they have had the opportunity to have this completed over the last three years and now the City is down to crunch time only a few weeks left. Mr. Sturgill stated that he was out there this weekend and asked the Mayor will it get done?

Mayor Malone stated that he believes it will be complete.

Mr. Sturgill also asked how the City is going to deal with the issue of putting someone in charge of the Park.

Mr. Malone advised that they are still thinking through those processes.

Mr. Sturgill cited the success that has been had with Allard Park in the 6th Ward, Shawnee State University leases Branch Ricky Park which he would say are two of the better maintained parks in the City of Portsmouth.

He also wanted to piggy back on Councilman Basham's comments and several others; he has received several calls about the Columbia Music Theater, which is not in his ward. He does think that it is important that this issue is handled as soon as possible, don't let fester, let's deal with it. He believes there is plenty of blame to go around about why it was allowed to be build but there is something that we are going to have to do. This is an issue that will not go away anytime soon. Open air concerts are something that we need to address as soon as possible.

City Solicitor Mr. Jones does not have a report at this time.

The meeting adjourned at approximately 6:40 p.m., on a motion by Councilman Basham.