

## MINUTES – REGULAR SESSION

### PORTSMOUTH CITY COUNCIL MEETING Monday, July 25, 2011 6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on, Monday, July 25, 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

On a motion by Councilman Albrecht, Council dispensed with the reading of the Journal for the regular session of July 11, 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 **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 8<sup>th</sup> day of November 2011, proposed amendments of Sections 5, 30 and 31 of the Charter of the City of Portsmouth, Ohio.

Councilman Basham made a motion to amend the ordinance by deleting the amendment made to Section 5 at the July 11<sup>th</sup> Council meeting and revert back to the originally proposed language,

Mr. Basham explained that following the last meeting he gave a lot of thought to the amendment regarding selecting a President of Council and realized that when the position rotated to him, it would be a job he could not perform because he already has a full-time job and would not have time to attend all the required committee meetings and other things that are entailed with that position.

Councilman Johnson said he understood the limitations but felt the problem that many in Portsmouth have identified is that one or two people are basically controlling Council for a number of years. Mr. Johnson felt that rotating the position made it “more equitable for the citizens recognizing that at some point their representative could be Mayor”.

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

Councilman Basham moved to amend the ordinance under Section 30 to change the words “Clerk of Council”, in the first paragraph, to read “City Clerk”, noting this would be consistent with charter.

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

Councilman Johnson, acknowledging Council to have, at the last meeting, voted down his proposal to amend Section 31, due to, what he believed to be was an issue of separation of powers, said he received an e-mail today from the Auditor indicating that after their review of the charter that his recommended amendment to Section 31 can stand as is. The Auditor, with regard to his e-mail, advised Mr. Johnson that his response was referencing the language that is in the ordinance presently before Council, with regard to the City Manager’s authority to hire and fire – not the language in the proposed amendment. Mr. Johnson apologized and asked what, in his amendment, was a problem. The Auditor advised that the rest of it was not his issue, noting the Solicitor has addressed his issue. The Solicitor stated that before Mr. Johnson’s proposed amendment, the original proposed ordinance indicated language that the City Manager could appoint or, when necessary, remove any officer or employee of the City. Mr. Jones said he added to that language “under his charge” and asked that, regardless of if or how they amend Section 31 that the language “under his/her charge” remains in the ordinance following “employees of the City”. Noting that Councilman Johnson’s proposed amended has seven (7) subsections, he asked that they look under subsection two (2) of that proposal and requested the words “under his/her charge” be added after “employees of the City”, which would then read, “employees of the City under his/her charge”. Councilman Johnson accepted the Solicitor’s request. The Solicitor noted the only other issue he has with the proposed amendment is to add in Section 5, following “on behalf of the City” the words “with proper authorization”. Councilman Johnson accepted that change to his proposed amendment. Councilman

Saddler expressed his concerns with the last paragraph of the proposal which states, “any Council member who violates any of the provisions of this section or votes for any ordinance or resolution in violation thereof shall be guilty of malfeasance in office and upon conviction thereof he shall cease to be Council member and shall be ineligible to hold further office or employment in the City government”. Mr. Saddler questioned why, if there is going to be an issue that is up for vote by Council, then why would someone be held accountable for malfeasance for their vote. Mr. Saddler felt that proposed section should be removed, noting there to be other sections of the Charter that deals with the removal of a member of Council. Mr. Johnson noted the current Charter to address Council’s interference with the Mayor and the same provision is provided. In response to Councilman Johnson asking if he were correct, the Solicitor stated his biggest concern to be, in that particular sentence or paragraph, the word “shall”. Mr. Jones read the sentence and felt it would be more appropriate to state that the member of Council “would be subject to charges of malfeasance” not that they “shall be guilty of malfeasance”. The Solicitor advised Mr. Johnson that with this proposal is deciding, in essence, whether or not a Councilmember is guilty of malfeasance by the word “shall”. The Acting President felt any violation of the public trust or obligation of Council members would be covered in a common law even if it is not in the Charter, saying if you do something that is against the law, you don’t need an ordinance or Charter revision saying that. The Solicitor concurred with Mr. Haas. Mr. Johnson said he believed this to be covered elsewhere in the Charter and he would have no problem with removing this language from the amendment. The language was deleted from Mr. Johnson’s proposed amendment.

Councilman Johnson moved that the ordinance be amended, in Section 31, per his amended proposal.

Mr. Johnson advised Council that these proposals were all recommended, especially one through seven, and the wording provided came directly from the Ohio County City Management Association. He said this was their recommendation for enunciating the powers of a City Manager.

There being no further questions or comments the roll was called on the motion to amend the ordinance in Section 31. **VOTE: ayes 6 – nays 0 The ordinance was amended accordingly.**

Councilman Saddler, referring to Section 5, asked if, having removed the deck of cards from the amendment, if that would void the words “the duties of Mayor/President of Council shall be assumed by the next Ward Councilmember in the previously established sequence.” Councilman Johnson advised that entire section reverted back to the original proposed amendment. It was noted that anywhere in the proposal where, in referring to the City Manager, it states “his” that it be amended to state “his/her”. It was also noted that in the last sentence of Section 5 it states “appoint any qualified” instead of “appoint a qualified” Councilman Saddler further noted that Section II identifies the election as a “Primary” instead of a “General” election.

Councilman Saddler made a motion to further amend the ordinance accordingly.

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

Councilman Albrecht moved this constitute a second reading of the ordinance as amended.

There were no questions or comments. The roll was called. **VOTE: ayes 5 (Haas; Johnson; Saddler; Basham; Albrecht) – nays 1 (Noel) A second reading was declared.**

The Clerk gave a **first reading** to an ordinance to authorize the appropriation of \$6,800 from Capital Improvements Fund No. 301 to allow the removal of riverbank debris and consider the same an emergency measure.

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 requested Council to amend the ordinance to provide the appropriate language allowing the Mayor to enter into a contract. He noted the standard language that is included in the CIP ordinances.

Councilman Johnson made a motion to amend the ordinance per the Auditor’s request.

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

There being no further questions or comments the roll was called on the motion for passage. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #34-11**

The Clerk gave a **first reading** to an ordinance authorizing the Mayor of the City of Portsmouth, Ohio, to submit to the Ohio Department of Development’s Office of Housing and Community Partnerships (OHCP) an application for the FY 2011 Ohio Small Cities Community Development Block Grant Formula Allocation and upon receipt of the grant, enter into agreement to carry out provisions of the grant, and consider 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.

There were no questions or comments. The roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #35-11**

The Mayor advised that he had submitted a request to add to the agenda an ordinance amending the CIP, with regard to Air/Heating Units repair/replace at the Annex Building, by increasing the cost of the unit from \$9,000 to \$15,000. The Mayor pointed out the 90 degree temperatures we have been experiencing and the weather prediction that this same weather will continue into the upcoming weeks.

Councilman Basham made a motion to add the requested legislation to the agenda.

The motion carried viva voce. **VOTE: ayes 6 – nays 0 The ordinance was added to the agenda as Item “7d”.**

The Clerk gave a **first reading** to an ordinance amending Ordinance No. 27 passed June 13, 2011 to amend the 2011 Income Tax Capital Budget to appropriate an additional \$6,000 from the unencumbered balance of the Capital Improvement Fund No. 301 to pay the additional cost necessary for the proper HVAC system for the second floor Health Clinic of the Municipal Building Annex and declaring same as an emergency.

No one present responded to the Acting President’s request for comments from anyone present in the Council Chambers.

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.

In response to Councilman Johnson’s inquiry as to the date of the present HVAC system, Mrs. Burton, the City’s Health Commissioner advised him that it is the same system that was there when the Health Department moved into the building.

There being no further questions or comments the roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #36-11**

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

Ray Mitchell – 2426 Micklethwaite Road, felt that handicap parking, by application, should be extended to parking places in front citizens’ homes. Saying some of them do not have a place to park he acknowledged that at the last meeting he provided Council with a copy of an application for residential handicap parking from Chillicothe, Ohio.

Mr. Mitchell reported an area on Kinney’s Lane, in front of Staker’s, that is in “terrible” condition and needs to be addressed.

**Miscellaneous business and reports:**

City Clerk’s Report

1. Received from the Auditor on 7/18/11 the following reports for the period ending 6/30/11:
  - Combined mtd/ytd expense report
  - Mtd/ytd revenue report
  - Mtd bank report
  - Mtd/ytd fund report
  - Appropriations transfer from transaction listing
  
2. Received a notice from the Ohio Division of Liquor Control of a request for a new C1 and C2 permit for:
  - Dolgen Midwest LLC
  - DBA Dollar General Store 2165
  - 1510 Gallia Street

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

## Mayor's Report

1. The Mayor , in response to Mr. Mitchell's remarks, advised Council that the Service Department is currently working on plans to repair the pot holes on Kinney's Lane, and Sunrise Avenue up to 24<sup>th</sup> Street.

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

The Acting President had nothing to report.

## Miscellaneous business from City Council

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

Councilman Johnson, in response to Mr. Mitchell's request regarding handicap parking in residential areas, acknowledged this issue to be a problem. He noted one of his constituents on Findlay lives across the street from McKinley Pool and people are constantly parking in front of her house and in front of the garage that her son uses. Mr. Johnson asked Mr. Mitchell to send the information to him again and apologized for not having it readily available. He asked the President to forward this request on to the Traffic Committee so they can look at that legislation to see if it would be appropriate for our city then bring it back to Council for consideration.

Noting that Life Air has begun construction on changes that were approved by the Planning Commission, Mr. Johnson acknowledged one of the conditions was that Life Air would landscape the area after having been given permission to cut down the trees. He reported that to have been several months ago and they have not yet addressed the landscaping even though they have already removed the trees. Mr. Johnson said he just wanted to remind the Mayor of the agreement.

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

Councilman Saddler advised the Mayor that he received a call from the 10<sup>th</sup> Street Mechanic Shop in the 900 block of 10<sup>th</sup> Street regarding a section of pavement that has been cut out leaving a hole that is a couple of inches deep.

Mr. Saddler, noting it was short notice, advised the Mayor that last night he sent him an e-mail with questions from constituents regarding Tracy Park and the prostitution that is occurring on the 10<sup>th</sup> Street side of the park. He further advised that he found drugs and syringes at the KIA/MIA Memorial. He acknowledged the e-mails to have originally been sent to Mr. Johnson and was forwarded to him since Tracy Park is in the 2<sup>nd</sup> Ward. Mr. Saddler advised the Mayor that he has sent him an e-mail with regard to this matter, which he can read in the morning.

Mr. Saddler reported that on September 11, 2011, at Tracy Park, the American Legion Post #23 Auxiliary has reserved the park for an afternoon honoring police, firefighters, sheriffs, emergency medical technicians and military veterans in commemorating the 10<sup>th</sup> anniversary of the tragic event of 911 in 2001. He announced this to be open to all the public and encouraged everyone to attend, noting the to be the most tragic event since the sinking of the ship RMS Lusitania on 5/7/15, which propelled our country into World War I and the bombing of Pearl Harbor on 12/7/41, which drove us directly into World War II.

### 3<sup>rd</sup> Ward

Councilman Basham thanked Councilman Johnson for recognizing, in a recent newspaper article, a resident of the 3<sup>rd</sup> Ward, Martha Sommer, for her outstanding landscaped property. Mr. Basham said Mrs. Sommer is one of his neighbors and acknowledged her to work "really hard" on the maintenance of her property.

### 4<sup>th</sup> Ward

Councilman Albrecht reported having received a complaint from a property owner on 7<sup>th</sup> Street regarding a sewer backup, which he passed on to the sewage department.

### 5<sup>th</sup> Ward

The Acting President, in response to Mr. Mitchell's request regarding handicap parking in residential areas, noted that Mr. Mitchell was on the Traffic Committee and advised him of the procedure for placing something on that committee's agenda. Mr. Haas stated that he did not like doing that and felt that since Mr. Mitchell is a member of that committee he should be able to present this issue to his fellow members. Mr. Mitchell claimed that the Traffic Committee passed this issue on to City Council. Mr. Haas said he would discuss that with the Traffic Committee's secretary.

Mr. Haas acknowledged Council having received from Richard Grimm, of Portsmouth Murals, Inc., a written announcement that a rededication of the newly repainted Branch Rickey mural will take place on Sunday, August 28<sup>th</sup> at 4PM in front of the mural and City officials have been invited to attend. The invitation stated that following a brief ceremony the group will then move to the Welcome Center for a celebratory reception.

6<sup>th</sup> Ward

Councilman Noel reported having received several reports about weeds in Sciotoville. He said he has discussed this with the Mayor and acknowledged an understanding of the problem, saying he was sure it was something on which the Mayor is working.

The Auditor had nothing to report.

At the request of the Solicitor, Councilman Johnson made a motion to recess into executive session to discuss pending litigation with regard to the City's Long-Term Control Plan.

The roll was called. **VOTE: ayes 6 – nays 0 Council recessed into executive session at 6:47 pm, and, at the request of the Solicitor, were joined by the Auditor and the Director of Wastewater, Richard Duncan.**

Council reconvened at 7:12 pm. Roll call showed all those previously in attendance to be present.

At the Solicitor's request, Councilman Johnson moved that emergency legislation be prepared authorizing the appropriation of funds to pay for a consultant with respect to the City's Long-Term Control Plan and pending litigation.

The motion carried viva voce. **VOTE: ayes 6 – nays 0 The preparation of the requested legislation was authorized.**

The meeting adjourned at 7:12 pm, on a motion by Councilman Johnson.

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City Clerk

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Acting President of Council