

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

Monday, August 13, 2012

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on, Monday, August 13, 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:

Kevin Johnson	1 st Ward
Rich Saddler	2 nd 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, and City Auditor, M. Trent Williams

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

On a motion by Councilman Basham, Council dispensed with the reading of the Journal for the regular session of July 23, 2012.

Councilman Johnson made a motion to bring back the tabled ordinance regarding the acceptance of funds for speed humps on 4th Street from Robinson Avenue to Waller Street.

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

STATEMENT OR REMARKS FROM CITIZENS ON ITEMS ON THE AGENDA

Jeanette Langford 1205 Albert Street – Mrs. Langford wanted to apologize to the Council for purchasing the speed humps with the funds that were donated by an anonymous donor. In her joy that someone had taken the burden from the City, she purchased those without coming to Council. However prior to the purchase the discussion was that the check would be written to the company and not to the City. The Solicitor and the Mayor were not aware of the change in the check. In no way would she ever try to go around the Council and she offers her apologies for that. It was of the head and not of the heart and she assured Council that it will never happen again.

LEGISLATION

The Clerk gave a **first reading** to a resolution approving and ordering for each eligible member of the American Federation of State and Municipal Employees (AFSCME) Local 1039 employed by the City of Portsmouth, Ohio, that a reduction of three (3.0%) of the statutorily required employee contribution of the Ohio Public Employees Retirement System shall no longer be “picked-up” (assumed and paid to the Ohio Public Employees Retirement System on behalf of its eligible member employees) by the City of Portsmouth, Ohio.

**RES#12-12
ASFCME
contract
acceptance**

Councilman Johnson moved to adopt this resolution.

Mr. Johnson requested that Mr. Williams (City Auditor) walk through this so that Council will have a comfort level as to what this resolution is for. He stated that he knows that this is part of the previously passed contract and that this is more for the public.

Mr. Williams stated that Ohio PERS – Ohio Public Employees Retirement System – requires 24% pension on wages for City employees. Ten percent of which is the employees responsibility and 14% of which the City is responsible for. The 10% is negotiable by union contract and has been at 10% for some time now. In recent negotiations it was collectively bargained to reduce from the 10% the current amount and there would be a three percent reduction. This resolution is required by OPERS as well as the IRS, anytime that a pension change is made.

Mr. Johnson questioned if the City is now picking up three percent more?

Mr. Williams advised that the City is getting three percent back from the 10% that was previously paid by the city. The 14% being paid by the City will remain the same. However the City will now only pay seven percent of the original 10% and employees will pay three percent instead of the zero percentage.

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

The Clerk gave a **reading** City Waste Water Director – Rich Duncan request that Council consider exempting a current sewer project from the Community Workforce Agreement pursuant to Section 1(a)(3)(c) and Section 1(b)(5) of Ordinance 2012 number 8.

President Haas advised that it is his understanding that this deals with the Community Workforce Agreement on a contract that was out for bid. There was some discussion regarding whether the Community Workforce Agreement could be met by contractors or employees locally. It is also his understanding that Mr. Duncan or the Mayor's office has received bids or information that this may not be possible and Mr. Duncan/Mayor's Office has requested an exception from the Community Workforce Agreement due to the circumstances. What Council is required to do is to have an up or down vote as to grant the exemption.

Mayor Malone advised that Mr. Haas is correct and that Mr. Duncan is present to address any details or questions that Council may have.

Mr. Haas advised that he was informed that the companies that were bidding would bring their own employees in. Mr. Haas also stated that he spoke with some of the local workers and they did not voice an objection. They were also notified that if there was going to be an objection they would need to attend tonight's meeting. The fair warning of this coming before Council helped to streamline the process and make sure that something didn't come up to prevent having all the ducks in a row. He appreciates the notice that this has come up and as it might be an issue.

Councilman Johnson clarified with Mr. Duncan that by his memo he certifies that none of the potential bidders can to adhere to the provisions set forth by the Community Workforce Agreement.

Mr. Duncan confirmed Mr. Johnson's statement.

Mr. Johnson moved the resolution that Council accepts the letter that is required by the Community Workforce Agreement legislation and that Council agrees to pass this on to the Mayor, that Council grants an exemption from the Community Workforce agreement.

Councilman Sturgill stated that the intent of the Ordinance was only to ensure that local union workers were used in respects to bidding out City work. It really would not make any difference if it was an out of town contract or a local contract that go the bid. Chances are that some of this work would eventually have to have specialized people for it anyways. Was that the intent of what we approved back in February?

Mr. Haas answered Mr. Sturgill's question by stating that the intent was that any contracts that are approved for services, construction or the like that were in excess of one hundred thousand dollars the hope was to have bids from local companies, meaning Scioto County or Portsmouth. Then you could go outside with the understanding that they would employ local employees to do the work. That was the intent of the requirements of this Community Workforce Agreement. So first we are looking local for a contractor and if we don't have that we are looking for those positions to be filled by local workers.

Mr. Sturgill stated that he talked to a couple local contractors over the weekend and basically he does not know who attended this meeting, but he noticed that everyone did sign in. The two contractors that he spoke to did not attend but they did have plans to bid. They informed him that if they were awarded the job there might be a case where there the skills necessary at the local level and that may have to go out and hire a few individuals from other areas. For the most part the majority would be local workers. His question goes back to: are we trying to ensure that an out of town contractor does the local thing and not bring in people with them at all?

Mr. Haas advised that his understanding of how the Community Workforce Agreement operates in general is that a contractor from out of town that is awarded a contract within the City of Portsmouth would bring in their foreperson, supervisor and hire the local labor force to perform the labor. This is his understanding of what the Community Workforce Agreement does. It does not tie the hands of the contractor by saying that if you are from out of town that everyone on that project must be from Portsmouth or Scioto County. Their supervisors and managers can be from that company.

Mr. Sturgill questioned that everyone else would be local unless there are special circumstances that local workers could not perform the desired work.

Mr. Haas agreed with Mr. Sturgill's statement.

Mr. Sturgill continued by saying that there may be some specialized stainless steel workers working right next to our local labor.

Mr. Haas advised that the import of the Community Workforce Agreement is that as long as there are local workers who are capable of and qualified for doing the work, they should be given the first opportunity. If they don't want to do it then the company should be free to hire or bring in their own workers if no local worker is qualified to do the work. He does not believe the intent of the Community Workforce Agreement is to tie up project or force them to have unqualified workers on the projects.

Mr. Sturgill asked if this is the first time that we have had this issue come before Council.

Mr. Haas advised that there was an earlier project that Sam Sutherland's (Filtration Director) that went out exempted.

City Solicitor, Mike Jones advised that this is the first time that this has happened since Council amended it (the Community Workforce Agreement) to come back to Council for approval. That is why it is in front of Council.

Mr. Haas continued that the PAE incident but was interrupted.

Mr. Sturgill asked if this was the reason that this ordinance was developed?

Mr. Jones stated that he believes the intent was that if there is local labor available to do jobs that is in an excess of one hundred thousand dollars, that those people should have the ability to do the work. That is the intent.

Mr. Sturgill asked if this would be an issue every time something like this comes up.

Mr. Haas advised yes - if it is a specialized project. He continued by giving a history of the PAE project. He advised that the exemption was granted by the Mayor's office on the project for the Water Department. Once that contract was met, there were comments that there were local people here that were capable of doing the work. So what Council did when amending this Ordinance was to require that if there is an exception needed that Council should have the opportunity to review it. If there are local contractors or union employees that feel that they can meet the specialized requirement that is part of the requested exemption, they will have the opportunity to do so before Council. Council will then decide if the exemption is granted or not.

Mr. Sturgill asked if the locals sign off on the work stating that they don't have the people.

Mayor Malone advised that no, they just won't bid.

Mr. Sturgill stated that they may want to bid.

Mr. Jones advised that nothing is stopping them from bidding. Mr. Jones wanted to expand on Mr. Haas's comments regarding Mr. Sutherland and make it clear that in that case we also have to take into consideration the lowest and best bidder. There was a significant difference, between the bid submitted by the company from Dayton and the local bids that were put in by two companies. Almost three hundred thousand dollars difference. He believes it was two hundred and eighty thousand dollars on a one point six or seven million dollar project. With this Community Workforce Agreement, in his opinion, the City cannot accept a bid substantially higher even though that may be local. If it is a situation where it is close in the dollar amount then the preference could be given to the local contractor. We are not only bound by this Workforce Agreement but competitive bidding under Ohio law. There is nothing that prevents local companies, union or non-union, from bidding on these projects. What Mr. Duncan has determined based upon his pre-bid meeting and the specifications for this job are that it is a very specialized job that requires specialized training. If local companies have that ability or can get someone to do it, then they can bid on this job. What Mr. Duncan and the Mayor is saying is that we are anticipating that this is going to be a problem with not having the ability to do the work locally and they want to have the ability to get an exemption. There are time constraints with this project due to grant funding. There is nothing that prevents a local company from bidding on the projects even if we grant the exemption.

Mr. Duncan stated that he has spoken to two major contractors in Portsmouth and both have stated that they both have contract supplier trying to work out some type of a joint project with the sewer line companies. However, they advised Mr. Duncan that it they advised that it did not make a lot of sense for them to bid on this project. Mr. Duncan assured Council that he has tried to stay in contact with local contractors so is to not keep them out of this project. They expressed to him that it was not practical to bid even if they partnered with other contractors.

Mr. Johnson asked if this was due to the Workforce Agreement or even if the Agreement was removed would it still not be advantageous for the local contractors?

Mr. Duncan advised that because so much of the work is specialized that it does not make sense for them to take the lead as it will just add more cost.

Councilman Kalb restated that this is a time sensitive issue due to the involvement of grant funding, he questioned if we had a resolution to have a majority vote to grant the exemption.

Mr. Johnson advised that his motion is a resolution.

Mr. Jones advised that if you look at the amended portion of the Community Workforce Agreement the Mayor has to submit a request asking for the exemption and Council by majority vote either will accept or reject the exemption.

Mr. Jonson stated that the motion that he made was to accept the report.

Mr. Haas advised that if Council accepts the Mayor report then we are opening this up to outside bids, if we reject.

Mr. Johnson advised Mr. Kalb that we do not need a written resolution. Mr. Johnson stated that he does not believe that one is needed and a motion becomes a resolution in the first place. His position is to accept this letter which fits the requirement.

There were no further questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 The exemption has been granted.**

The Clerk gave a **first reading** of an ordinance authorizing the appropriation of \$1,342.90 to Capital Improvement Fund No. 301 to cover the cost of speed humps on 14th Street from Robinson Avenue to Waller Street.

**ORD #12-41
Speed Humps
on 14th Street
from Robinson
to Waller**

Councilman Johnson moved to have the rule requiring three reading be waived due to the circumstances.

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

Councilman Johnson moved to pass the ordinance.

Mayor Malone questioned if the Council would want to change the language of the ordinance to reflect that the funds were a donation and not from the CIP.

Mr. Haas requested the City Auditor, Trent Williams, to address these issues.

Mr. Jonson asked if the donation would have gone into the 301 fund and if it was the appropriate one for it to go into.

Mr. Williams did not understand the question.

Mayor Malone restated that according to the ordinance this funding was coming from the CIP fund.

Mr. Williams advised that the funds were deposited into the CIP due to it being a Capital Improvement, regardless as to the original funding being a tax or donation.

Mr. Kalb asked if the donation would need to be accepted.

Mr. Williams advised that not in his opinion but Council may want to ask the Solicitor his opinion.

Mr. Johnson advised that he was asked at the last meet and the answer was yes it does.

Mr. Williams asked the Solicitor if the monies needed to be accepted.

Mr. Jones advised that he did not state that it had to be accepted. He stated that his concern was at that time it was his understanding that the check was going to the company. Typically we have accepted gifts in the past but his concern was to ensure that there was an accounting record. However after speaking to Mr. Williams who is comfortable accepting the gifts, so is he.

Mr. Williams stated they receive and deposit cash, we receive donation of cash in the Health Department funds daily and Fire and Police donation funds. It has only been in the past where the City has accepted property or any other kind of things that the City would have maintenance or up keep of it or liability. The only reason that something would be brought to

Council for action if there was an appropriation necessary. In this case if there was not money appropriated for speed humps.

Mr. Johnson stated that this brings up an interesting situation stating that Mr. Williams stated that there was not an appropriation approved, it was not in the budget for the speed humps. However last year there was not an appropriation for the purchase of an ambulance. How are these two things different?

Mr. Williams explained that appropriations are given at the beginning of the year and are appropriated as received within the Fire and Police donation funds. They are for specifically that purpose so they don't have to go to City Council for a couple of reason. One: the department realizes that City Council may not have the general fund money to fund whatever project that they are wanting to do. Two: it was intended to supplement the budget. The Eagles in particular, wanted to give money for items needed by the Fire Department and that was addressed in the letter to Council.

Mr. Johnson stated previously that there is a liability issues with the speed humps and it was appropriate to come to Council due to this liability.

Mr. Haas stated that he understands Mr. Williams as saying that if someone donated property to the City the City would have to take on liability but if it is cash there is no liability associated with it.

Mr. Williams advised that the Fire Department purchase of the ambulance was a cash transaction.

Mr. Johnson advised that he understood that but it is presupposing that the Fire Department had no other means and given the budget deficit and the City was cutting back.

Mr. Williams advised that the donation fund is not to supplement the General Fund. It is not intended to reduce any deficit or operating funds. It is a discretionary fund.

Mr. Johnson again advised that he understands that but it makes Council assume that there were no other means. Plus the City assumed a physical asset that has to be maintained and there is cost there.

Mr. Williams advised that this was a purchase and different than accepting a donation of something that we didn't purchase.

Mr. Johnson advised that he believes that it is a poor business practice and that he will continue to pursue it.

Mr. Williams advised that usually we do not have Council to act administratively. The Mayor and that department head saw the need for a purchase and they made that purchase within apportions that they had.

Mr. Johnson that he knows that and that they decided to go ahead and consider an EMS business. They still purchased items that we are still dealing with, an unused fixed asset.

Mr. Williams advised that it is valued much higher than that of the cost to purchase it.

Mr. Johnson asked what good it is doing us,

Mr. Haas advised that this has gone off course and brought it back to the issue at hand.

There were no further questions or comments. The roll was called. **VOTE: ayes 5 – nays 0 The Ordinance was passed. ORD #12-41.**

City Solicitor requested that Council entertain going into Executive Session to discuss pending litigation and requested that the Mayor, Auditor and Mr. Rick Duncan join.

Mr. Johnson moved that Council go into Executive Session to discuss pending litigation.

The roll was called. Vote: ayes 5 – nays 0 - **The motion carried. Council recessed into Executive Session at approximately 6:38p.m.**

Council reconvened at 7:23 p.m. The roll call showed all those previously in attendance were still present.

MISCELLANEOUS BUSINESS AND RPORTS:

City Clerk’s Report –

1. Oaths of Office

Hilda Drake	Portsmouth Shade Tree Commission	8/8/2012
Sue Burke	Portsmouth Shade Tree Commission	8/8/2012
Jean Carlson	Portsmouth Shade Tree Commission	8/8/2012
Ann Bonner	Portsmouth Shade Tree Commission	8/8/2012

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

Mayor’s Report –

1. Mayor Malone advised that the City has been in negotiations with the FOP Dispatchers union and believes that there has been a tentative agreement reached. He had hoped that he would receive a call from them stating what their vote was so that he could have presented this to Council this evening. However the Mayor has not heard from them as of yet.

The Mayor’s Report was received, filed and made a part of the record, on a motion by Councilman Kalb.

President’s Report –

1. Mr. Haas advised that there is one position on the Shade Tree Commission and with the assistance of Councilman Johnson an individual has been found to fill that spot. Mr. Bill Shaffer has agreed to take the position and is so appointed.
2. Mr. Haas advised that the Building Committee meeting will be held on Wednesday, August 15, 2012 at 5:30 in Council Chambers.

**Appointment:
Shade Tree
Commission -
Shaffer**

The President’s Report was received, filed and made a part of the record, on a motion by Councilman Kalb.

MISCELLANEOUS BUSINESS FROM CITY COUNCIL

6th Ward Councilman Sturgill advised that all issues have been passed on the Mayor’s Office and Department Heads.

He wanted to thank Mr. Smith (Chris – Health Commissioner) on his help with an issue that dealt with an animal issue that was handled very quickly,

Mr. Sturgill asked the Solicitor or any member of Council who wished to comment. He wanted to know if the City has a Panhandling Ordinance?

Mr. Jones advised that we do not.

Mr. Sturgill asked if there is a reason why we do not have one.

Mr. Jones advised that is because Council has never chosen to have one.

Mr. Kalb asked if he was discussing those persons that stand on corners and such.

Mr. Sturgill responded in the affirmative and that he needed to work on this in the absence of legislation.

5th Ward Councilman Haas advised that he had the privilege of going with Mayor Malone out to look at an issue in an alley way that was in the First Ward. He stated that it is an odd situation. The houses on Scioto Trail on the east side above 25th Street , some have no access to the Trail and the residences have been using this alley way (term used loosely) behind their houses. Mr. Haas advised that in his inexperience he looked at this and it appears that over the years the City would

come along if they had any leftover black top and just kind of dump it and spread it out in this alley. This area is in bad condition and something should probably be done with it. He thinks that the Solicitor should be consulted with the issue of the property because Mr. Haas does not think there is an easement through there or right of way and there are access issues for residents that do not have drive ways. He also commented it is difficult to get in and out of the property on Scioto Trail. He thinks that this should be addressed sooner rather than later.

Mayor Malone advised that there was a discussion regarding this subject today and that there may be a solution to this issue.

Mr. Haas advised that he was happy to accompany the Mayor to look at this issue and thanked Mr. Johnson for bringing it to Council's attention.

Mr. Johnson asked if they were able to speak with the person who made the complaint/concern about this area. The Mayor advised no they had not. Mr. Johnson advised that he would contact the citizen via email regarding the visit to the area.

Mr. Haas advised that they saw the issue and it was obvious.

Mr. Johnson advised that his concern was the impact on the citizens in the area. He noted the steepness of the grade (indicated a steep angle with his hand) and they are much closer to Scioto Trail than those on the other side. When they try to back out they can't see traffic.

Mr. Haas stated that one of the issues he thinks is the retaining wall. Some of those driveways are torn up and he does not see how they can get a car in there.

4th Ward Councilman Kalb advised that the issues in his Ward have been resolved by the appropriate departments.

3rd Ward Councilman Basham addressed the Mayor requesting an email updating Council regarding the City's website.

Mr. Basham also had one complaint that he would like to have passed on to the service department regarding where Kenney's Lane and U.S. ST 23 meet there are painted poles that were put up and they are in disrepair and the citizen wanted to know if these could be taken down.

Mayor Malone asked if that was on the West side of the viaduct, and that there was an organization that takes care of that and he will follow up with them.

1st Ward Councilman Johnson addressed Mayor Malone stating that Jenny Channel, owner of the new business at of 11th and Hutchins, is very grateful for the quick removal of the traffic light box. It has made a big difference at their front entrance.

Mr. Johnson wanted to thank the Mayor and Councilman Haas for their looking at the issue behind Scioto Trail off of 25th Street. Mr. Johnson will be following up with the original complainant and the neighbors to let them know that the area has been visited.

The meeting adjourned at approximately 7:32 p.m. on a motion by Councilman Johnson.

City Clerk

President of Council