

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING

Tuesday, May 26, 2009

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on Tuesday, May 26, 2009 at 6:00 p.m., in the Council Chambers of the Municipal Building.

Acting President, David Malone 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:

Mike Mearan	1 st Ward
David Malone	2 nd Ward
Bob Mollette	3 rd Ward
Jerrold Albrecht	4 th Ward
John Haas	5 th Ward
Richard Noel	6 th Ward

Also present were Mayor James D. Kalb; City Solicitor, Michael L. Jones and City Auditor, M. Trent William.

Council dispensed with the reading of the Journal for the regular session of May 11, 2009, on a motion by Councilman Albrecht.

There was no public hearing and there was no one present who wished to address Council about any item on the agenda.

LEGISLATION

The Clerk gave a **second reading** to an ordinance authorizing the Mayor to offer for sale certain City real estate located south of 12th Street to 11th Street commonly known as the turnaround ramp, Portsmouth, Scioto County, Ohio, as described in the attached legal description and further authorizing the Mayor to enter into a contract for the sale of such property and establish a minimum bid for the sale of such property.

Councilman Albrecht moved this constitute a second reading.

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

The Clerk gave a **first reading** to an ordinance authorizing an additional appropriation of \$37,036.00 for the purchase of a backhoe as requested by the Waterworks Department in the 2009 CIP budget.

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.

Councilman Mollette, after reviewing the purpose of the ordinance, inquired as to how many payments the City has made on this purchase. The Mayor advised this to be the first year of any payment and the Auditor confirmed there to be sufficient money in the CIP for this purchase.

There being no further questions or comments the roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #31-09**

The Clerk gave a **first reading** to an ordinance authorizing the acceptance of insurance check no. 3958 in the amount of \$7,949.99 from HHC Insurance Company for reimbursement for loss of a vehicle into General Fund No 101.000.4931 and the appropriation of the same into Law Enforcement Trust Account Line Item No. 225.221.5349 for replacement of Drug Task Force vehicle.

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 Mollette's inquiry as to whether or not this was a total replacement or for repairs, the Mayor advised the vehicle was totaled. This was confirmed by the Chief of Police. In response to Mr. Mollette inquiring from where the total cost of a new vehicle would come, the Chief stated the reimbursement will pay for a used vehicle and there would be no additional cost.

The Auditor questioned the structure of the request, noting the acceptance of the reimbursement into the General Fund. He suggested the ordinance be amended to accept the check into Law Enforcement Trust, Fund #225, thus avoiding the necessity of transferring the \$7,949.99 from General Fund into the trust fund.

Councilman Mollette moved to amend the ordinance by replacing the words "General Fund No. 101.000.4931" with the words "Law Enforcement Trust Fund No. 225"

The roll was called on the motion to amend. **VOTE: ayes 6 – ayes 0 The ordinance was amended.**

There being no further discussion on the motion for passage the roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed ORD. #32-09**

STATEMENTS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Penny S. Book – Riverview Wesleyan Church, 212 Madison Street expressed her concern over the Ohio Division of Liquor Control approving the transfer of a liquor permit to property located across the street from her church. Ms. Book noted the City was notified of this request for a transfer in February of this year but did not request a hearing on the matter. She said the Church was not aware that Council had been notified of this request, until April. She stated that a hearing was held on this issue by the State Liquor Board in April and they were told at that time that since the City had no problems with the transfer the Board would go ahead and approve it. She said she called the Mayor's office and was told this matter was out of the City's hands. Ms. Book expressed confusion about how to handle the matter and questioned whether or not the City would have approved this transfer were it to have been near a school. She also questioned a building permit being given to the owners of the property in question and inquired as to whether or not there is a way in which to "stop a building permit". She requested help from the Mayor and City Council to address this situation.

Charles Arthurs – 120 Roby St., West Portsmouth, a member of Riverview Wesleyan Church, claimed City Council to have approved the liquor transfer in January but the Church was not notified about the request until late February. He further claimed the Church to have received a notice on April 14th that a hearing had been scheduled for April 21st; however they were then notified that the hearing had been postponed until April 23rd. Mr. Arthurs stated that the Church's District Supervisor, from Columbus, Ohio, attended the hearing and presented a three-page objection to the transfer. Mr. Arthurs stated, "on the lower petition they said that the City should have been represented at that hearing". He said there were no officials from the City present to represent the citizens. Mr. Arthurs stated that they were later notified by the Department of Liquor Control that their objections had been overruled and the transfer would be granted. Mr. Arthurs also questioned whether or not the City would have approved the transfer, if the request involved a school. Mr. Arthurs accused the City of discrimination.

Ellis Warnock – 1310 Linden Avenue, a member of Riverview Wesleyan Church, advised Council that the owner of the property in questions owes \$115,000.00 in back taxes and felt he should not have been granted a building permit until his back taxes have been paid. He also related an incident that occurred at the Church that involved "a drunk".

Linda Switzer – 319 Front Street stated that she lives a block away from the proposed carry-out and questioned whether or not the City had an ordinance that regulated how close an establishment that sells liquor can be to a Church. She felt that if the City did not have one, it should. She claimed that her Church, which is located across from Shawnee State, also has had some "interesting things going on with alcohol and Shawnee State". She continued saying, "The man who signed the okay to have it, doesn't remember signing it". She suggested someone should check on the ordinance.

Tim Hartlage – 1555 Jackson Avenue inquired as to whether or not the City had an ordinance against barking dogs. He said he had to call the police, who responded promptly, because of a neighbor's dog awaking him up in the middle of the night. He also inquired as to whether or not there is an ordinance that states how many dogs a person can own before they have to secure a kennel license.

Allan Barlow – 2717 Waller Street, representing the North End Reunion, advised Council that there are 725 current and former residents, from Alaska to Florida, who have been invited to this reunion. Mr. Barlow requested financial assistance, in the amount of \$2,000, from the City to defray the cost of this reunion. He said he has previously sent letters making this request to the Mayor but did not receive any response.

Harald Daub – 1221 22nd Street, as in the past, requested the City promote a clean-up program, noting this to have been done previously when the City would set dumpsters out in various sections of the City. He asked that dumpsters be set out for a period of one to two weeks in each ward.. He thought this would also encourage residents to clean up vacant lots in their respective neighborhoods.

Miscellaneous business and reports:

City Clerk's Report:

1. Received, on May 13, 2009, from the Auditor the following reports for the period ending April 20, 2009:
 - Combined mtd/ytd expense report
 - Mtd/ytd revenue report
 - Mtd bank report
 - Combined mtd/ytd fund report
2. Oaths of Office
 - Jeremy Gatti for position of Code Enforcement Officer II
 - Brian Hopkins for position of temporary Code Enforcement Officer.
3. Beginning in June of this year, the City's Codified Ordinances will be placed on line by Walter Drane. Hard copies of the replacement pages will no longer be provided except for those members of Council who do not have a computer. The initial cost of this service should not exceed the amount that has been budgeted and future updates should be less than the cost of hard copies, which includes printing and shipping costs.

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

Mayor's Report:

1. In response to the concerns of the members of the Riverview Wesleyan Church, the Mayor explained the processes for objecting to the transfer/issuance or renewal of a liquor permit. The Mayor, along with the City Clerk, explained that the notice that is sent to the City is for the Chief of Police and is also sent to the legislative body because a request for a hearing by the municipality's chief law enforcement officer must be made by the passage of a resolution. It was noted that the Department of Liquor Control notifies schools and churches of any request regarding a liquor permit and noted that the notice that was sent to the Church was after the deadline for a response from the City. It was also explained that the City Council did not approve the transfer of a permit and that the City, because of not having any problems with the permit holder, did not request a hearing. The Mayor also advised the Church members that if they had contacted their ward representative, he would probably be happy to represent them at the hearing. With regard to an ordinance regulating the distance from a school or church at which liquor can be sold, the Mayor pointed out that determination is governed by State law not by ordinance. The Mayor further explained that delinquent taxes is something that is addressed by the county, not the City and that the issuance of a building permit would not have anything to do with whether or not anyone does or does not have a permit to sell liquor. He explained that building permits are issued for the purpose of regulating building codes.
2. With regard to the complaint about a barking dog, the Mayor noted there to be an ordinance with regard to this type of nuisance, he also believed there to be an ordinance that determines what number of harbored dogs constitutes a kennel.
3. The Mayor apologized to Mr. Barlow and advised him that he did receive his letters and had, in fact, forwarded them to Council for their consideration.
4. The Mayor again explained that the reason the City no longer places dumpsters throughout the City for use in a clean-up campaign is due to the fact that such past programs did not prove to be as beneficial to the City as was hoped and due to the fact that citizens abused the convenience of the dumpsters by using them to dispose of paint, tires and other materials that are not for placement in a dumpster. He again advised that the City is looking at ways to provide a method for residents to dispose of trash as a result of someone cleaning up their property.
5. The Mayor announced a Gene Bennett baseball tournament will be coming to Portsmouth next year. He said he did not have all the details but it will be a very big event. He said this will bring a lot of people to our City and there are plans to make some improvements to Branch Rickey Park. He said he believed it would be in June of next year and expressed his hope that it will become an annual event.

6. The Mayor introduced Daniel Saez, who he had just appointed as the City's Community Development Director. The Mayor noted that Mr. Saez was previously employed by the City in a related capacity.

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 announced a special event, hosted by The Arts Council, that will take place this coming Saturday at the SOMC Friends Center at 6:00 p.m. to honor Martha Burton for her interest in and knowledgeable contribution to the arts.
2. Mr. Malone welcomed Mr. Saez and stated that he was looking forward to working with him.

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:

1st Ward

Councilman Mearan announced water to be in McKinley Pool and everything is on schedule for the pool to be opened on June 1st. Acknowledging his receipt of a letter requesting a donation for the pool, he encouraged everyone to make a donation so children who cannot afford the \$1.00 admittance will have an opportunity to enjoy the pool.

He advised Mr. Barlow that Council is ready to take action at their June 8th meeting with regard to helping finance the North End Reunion, which will be in time for the beginning of the celebration.

Mr. Mearan acknowledged having received a call from Ms. Book with regard to Riverview Wesleyan Church's concerns. He sympathized with their situation but noted, having been involved with liquor permit transfers in the past, that when an application for a liquor permit is filed, one of the things that is requested is whether or not the premises is within so many feet of a school or church. Mr. Mearan further noted there to be certain things over which the City has exclusive control but there are other things over which the Federal Government has exclusive control and in this situation the State of Ohio has exclusive control over the issuance or transfer of a permit. He reported having been present at hearing where, regardless of the fact that the premises was within 500 feet of a school or church, it did not necessarily stop the granting of the permit or transfer. Mr. Mearan advised that Kroger's was given a permit even though they are across the street from a church. He noted for a certainty that there would be no liquor sales allowed on a Sunday. He also noted that it may be just a perfunctory transfer because the same owner was transferring it to the same person. He suggested that perhaps nothing is going to happen but was not sure. He advised the members of the church that if they experienced any problems they were free to call him at any time and it will be looked into and he felt the Chief would work with them. He said the City does not want their church to be disturbed but the City has no control over the matter. With regard to taxes, he said he felt those to be sales taxes, which would go to the state and a permit would not be issued to anyone who owes sales taxes. He wished the church "the best" and expressed his hope that the problem is resolved.

Extended regrets to Councilman Mollette on the passing of his father.

2nd Ward

Councilman Malone had nothing to report from his ward.

3rd Ward

Councilman Mollette thanked everyone for their support, thoughts and prayers with regard to the passing of his father.

Reappointed Darlene Daub to a full-term on the Traffic Committee and expressed appreciation for all the Traffic Committee's work. He said he would like to see this committee take on a larger role of responsibility and "have more input to what the decisions of Council and recommend traffic issues to City Council".

Acknowledged receipt of a letter from the Ohio EPA, dated May 12th in his Council packet. He noted the letter to state that a draft plan for an OEPA permit for the Portsmouth Lawson Run Sewer is on file at the City's Wastewater Treatment Plant. Mr. Mollette recited some of the statements contained in the letter, which included an invitation to the public to submit comments regarding the draft permit, which, if enough public interest is indicated, a public hearing will be held. Noting this to be

his first notice about this, he questioned how the public could submit input if, at the beginning, a public hearing is not scheduled. He said he would like to see Council push for input for additional facts on the issuance of this permit.

He thanked the individual speakers with regard to the issue of the transfer of a liquor permit and questioned three-pages of objections not being responded to or valued. He said he would like more information and inquired as to any zoning regulations and whether or not that particular area is zoned for liquor licenses. Acknowledging there to be a lot of information about which he does not know, Mr. Mollette expressed his interest to be “a representative of the citizens to, if there is a way that we can assist them, they’re coming to us for some input”. Mr. Mollette noted his lack of knowledge about the subject to say that the issue is resolved. He asked Council to request the Solicitor “to give us some input on whether or not there’s any zoning, what issues, if these guys have addressed, if what valid issues there are and address it at the next Council meeting or, if the Solicitor’s leisure to give some input”. He again acknowledged not knowing enough about the issue and did not want to give “false hope”, noting that the City may not be able to be of any assistance.

With regard to barking dogs, Mr. Mollette noted there to be an ordinance that does not allow dogs to be a nuisance, saying “but there is no criteria on what that means”. Mr. Mollette felt that the City would have leverage to take some corrective action.

He expressed his appreciation to everyone who spoke this evening, the newspaper for reporting on the meetings and Lorenzo Bentley for broadcasting the meetings on WPAY, saying, “you can listen to the whole thing without the snapshot, you can listen to the whole meeting, if you tune into the AM channel with WPAY”.

4th Ward Councilman Albrecht had nothing to report but advised those representing Riverview Wesleyan Church that, if there is anything the City can do, they will.

He extended condolences to Councilman Mollette on the death of his father.

5th Ward Councilman Haas extended condolences to the Mollette family.

6th Ward Councilman Noel had nothing to report from his ward, however, he noted there to be a problem with street lightening in the area of 18th Street and Chillicothe Street at the viaduct. He reported the street lights at the north end of the viaduct to not be working.

Mr. Noel also extended his condolences to Councilman Mollette.

Neither the Solicitor nor the Auditor had anything to report.

The meeting adjourned at 6:54 p.m., on a motion by Councilman Albrecht.

City Clerk

Acting President of Council