

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING

Monday, July 27, 2009

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on, Monday, July 27, 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 Williams.

Council dispensed with the reading of the Journal for the regular session of July 13, 2009, on a motion by Councilman Albrecht.

In response to memos received from the Director of Wastewater, Richard Duncan and the Director of Water, Sam Sutherland, Councilman Albrecht made a motion to add to the agenda an ordinance and a resolution. The ordinance would authorize entering into a contract to construct a high service pump upgrade for Water Treatment Plant Improvements and to accept and appropriate funding for the project. The resolution would authorize applying for, accepting and entering into a Water Pollution Control Loan Fund Agreement on behalf of the City for planning, design and/or construction of wastewater facilities and designating a dedicated repayment source for the loan.

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

STATEMENTS FROM CITIZENS ON ITEMS LISTED ON THE AGENDA

Jerry Conkel – 2719 Sherman Road, with regard to the ordinance to assist the Portsmouth Mural’s Inc., asked if the lease would be void, if they do not get the grant. He also wanted to know “if anybody down there can tell us what this money is going to be used for”.

Larry Essman – 2417 Grandview Avenue, with regard to the resolution to enter into a loan fund agreement, he inquired as to what benefit this application would have to citizens subjected to combined sewer overflow. He inquired as to whether or not these funds would provide future relief for these citizens and what the fee structure would be for repaying this loan. Saying this would have to come from user fees in the Waterworks’ enterprise funds and presumed this would require additional fees.

Jane Murray – 1920 Dorman Drive requested Council give the resolution regarding a loan fund agreement a first reading, saying there was plenty of time to look at it and believed time is needed for Council and the public to pose questions. Ms. Murray felt it to be Council who sets the policy of government, priority of the community and the budgets that go along with those things. She said, for the last month, she has attempted to try to find out something pertaining to this issue and expressed her doubt that members of Council have the information. Saying she did not get the information she needed from this government, Ms. Murray said she did get what she needed from the Ohio EPA. She said the information she received had to do with the stimulus funds and claimed the City had only one request in December for the treatment plant upgrade, which she acknowledged is needed. She then reminded Council of an additional request for funding in March of this year, saying, “however, Council is not allowed to set the priorities” and adding that “many in the public felt that the priorities sounded as though it was going to be renovation of the Marting’s Building for City offices but we never did see the list of projects requested”. She claimed some of them have been following that through their own information through the state government. She continued saying that through conversations with state and federal EPA “it became clear that this government applied for funding from two separate funds”. She noted one to be for \$6,000,000.00 for upgrades to the treatment plant while the other was for \$20,000,000.00 for an “express pump and sewer to take the storm water out of our system to the Scioto River, therefore addressing the issue that Mr. Essman and our neighborhood, all over the City, have been asking about and that is getting the storm water out of the system so that we do not have the sur charge and the sewage backup into our houses”. Ms. Murray said she did not believe Council “was informed of it” and that she knows the public was not, saying, “in fact, the City was granted that money by the USEPA, they even told me where your money is still in there, \$5,000,000.00 for that, which was the maximum any community could get in that fund, \$3,000,000.00 in the other project fund, the maximum one could get in that fund was 50% of your

request". She noted the City to have gotten the maximum from that fund - \$3,000,000.00 of a \$6,000,000.00 request, further noting, however, that on May 9th, the City's Director of Waste Water, Richard Duncan wrote the OEPA and she continued by reading this correspondence, which requested a transfer of proposed "stimulus and low interest loan fund money for our combined sewer separation via storm water pumping station and express sewer project transferring those monies to the Lawson's Run Waste Water Treatment Plant Improvement Project". Ms. Murray, "reading through all this documentation" interpreted the State to be saying "are we going to let Portsmouth know that they can get \$3,000,000.00 at most for their \$6,000,000.00 Lawson Run Project - not the full \$5,000,000.00 that Mr. Duncan felt could be transferred from our express sewer to this treatment plant, this may or may not make any difference to them in their decision". Ms. Murray stated, "in fact what you are seeing before you tonight was not your decision, I can only assume it was Mr. Duncan's in compliance with the Mayor, that all, the only money that we, was through that request so the final project that came through our \$5,000,000.00 for our \$20,000,000.00 project were no longer there all we got was \$3,000,000.00 for the \$6,000,000.00 plan upgrade". She continued, claiming that we have \$8,000,000.00 in grant funds and explained, to those in the audience that might not know that grant funds do not have to be repaid. She stated that the City will have had \$15,000,000.00 in low interest loans and further stated this to be something the City would have had anyway. Ms. Murray claimed the City to have lost \$5,000,000.00. Her five-minute time limit having expired, Ms. Murray requested "a few more minutes". With Council's agreement, Ms. Murray was allotted an additional four minutes. She continued, saying, "So when you're reading through here you need to understand that we gave up \$5,000,000.00 that was going to go to address our storm water combined sewer problem, which we have to address anyway". Ms. Murray said that in her conversations with the USEPA today, she learned that they are reviewing the City's long-term control plan and are making comments in writing. She announced that when it has been submitted she will receive a copy for her neighbors and expressed her hope that members of Council will also receive copies. She also stated, "Then they will be here and we have requested a public hearing, when they are here, we've been granted a public hearing, public meeting and we are also going to invite the OEPA to that meeting". Ms. Murray claimed there to be time to find out what's involved here. Referring to the memo to Council from Mr. Duncan, Ms. Murray stated that he was asking that \$3,700,000.00 is going to be repaid with higher user fees. She suggested that future administrations and Council's might have other ideas and plans. She continued saying, "This does not take into account what other grants monies (sic) we might be able to (*not discernible*), if we put this is writing with the Ohio EPA we're dead, stuck with it" It was her contention that the City needs time to review it's options, saying, "and more than that we have time in that I talked with the gentleman who's in charge of this funding loan program, he sent me the loan agreement, I have a copy of it, I just got it an hour ago, he told me the funds are going to be available the end of October so Portsmouth needs to have their loan package in by the first of October". She claimed there to be "plenty of time to understand and ask questions - why did we lose \$5,000,000.00 - who is to make those kind (sic) of policy decisions - why were those decisions not brought back to Council - why is the public left out of this". She appealed to the Acting President of Council and this Council, claiming to have done so month after month, saying "this is the public's business, this affects our lives" and referred to remarks made by Mr. Essman about living in fear of having more sewage in their homes. She claimed the only reason for not having more sewage during these past three months to be due to the fact that the USEPA required the City to lower its gates. She said she called Saturday to check to see if they were lowered and was advised that the gates were down and the bypass was good. She said she relayed this information to the EPA today. Ms. Murray acknowledged that the EPA has advised that the lowered gates are no guarantee and that the long-term control plan has to be implemented. Ms. Murray reiterated previous claims that citizens have called her to report "massive problems" with backup. She continued by reiterating previous questions she has asked. She also insinuated that people living on Old Post suffered storm water damage in May and June as a result of recent construction in that area. She again asked that time be taken on this issue and insisted that the information is not due back to the State of Ohio until October 1st. To Council, she said, "You deserve that time as do the public".

Teresa Mollette - 105 Franklin Blvd. questioned whether or not the legislation requested by Mr. Duncan should not have been an ordinance instead of a resolution. She also felt this legislation should not be passed on the first reading and expressed her opinion that more information is needed.

Mrs. Mollette reiterated previous remarks she has made with regard to a "comprehensive plan" and "checks and balances". With regard to a request for a lease agreement with Mural's Inc., she declared the legislation to be "a basic example of the continued poor quality work that is flaunted by several members of our City government". She claimed that if this ordinance is passed this evening she would see it as being "a minimum of the true dereliction, negligence and irresponsibility at worst lying, incompetence and corruption. This ordinance depicts the inferior standards common expected by certain members of Council and their ineffectiveness to perform oversight responsibilities". She started to make a claim about the ordinance but digressed to a remark made by the Solicitor about \$250,000.00 being lost to the City if this ordinance was not passed by July 31st. Mrs. Mollette claimed this to not be true since it has been determined that the money was earmarked by Representative Book and it was Mrs. Mollette's belief that "the money will be available whenever the proper paperwork and adequate paperwork is there to follow it through". She claimed the "Ohio Cultural Building Commission meets quarterly and it can be discussed in October. Mrs. Mollette insisted that there is no hurry to meet the July 31st deadline. She also claimed that Lisa Carver, with the Chamber of Commerce, has already stated "we are outside our painting period anyway", therefore, Mrs. Mollette asserted, the time frame has passed and "there will be no painting done this year". She reiterated her opinion that there is no hurry and claiming that if the Mural Committee's request were looked at it could be seen that they want to paint five murals which she identified as 1) TOSORV 2) Union Laborers which she said were completed and claimed there is not going to be another mural. With regard to the remaining three murals, Mrs. Mollette claimed these to have already been placed on the Welcome Center. She said, "The Welcome Center is a brick

building, I went down and took pictures”. She claimed the mural on one side of the building was not done by Dafford, however the other two were “a small signage type thing and if that is \$250,000.00 for those three murals and, of course the fourth side is total brick”. Mrs. Mollette claimed the purpose of the grant, as depicted in this ordinance, wasn’t true. She claimed the wording of the ordinance to be incorrect, saying “those murals are complete – there are no new murals”. She also noted that the TOSORV and union laborers murals have been placed on the flooding side of the wall. Mrs. Mollette said, “I want to know, where why we’re in such a rush to try to get this money to the Mural’s Inc., and why is not the City of Portsmouth getting it”, noting that to be \$250,000.00 that the City of Portsmouth is also eligible to receive to do that same type of work. She reiterated previous remarks about the funds being earmarked and that the funds would come to the City whether passed now or in the next 90 to 180 days. She repeated “there is no hurry” and questioned why, as she claimed, “We are pushing this through”, saying that is the one thing she would like to know. She also questioned “why are we giving up the entire surface of the floodwall” noting there are two murals being requested out of the five on the floodwall and wanted to know why the lease was not just for the surfaces where these panels are located. Mrs. Mollette’s time having expired she took her seat.

Linda Switzer – 319 Front Street agreed with Mrs. Mollette and expressed her hope that Council will ask questions and said she would like a representative of the Mural Committee to be present for a third reading. Ms. Switzer said she would appreciate it, if any member of Council did do their homework, to let the public know what they learned. She requested the matter be given three readings.

Alan Barlow – 2017 Waller Street said he was looking over the resolution that was added to the agenda and asked if there is a problem with the City’s water department that they can’t count.

LEGISLATION

The Clerk gave a **third reading** to an ordinance authorizing the appropriation of \$10,000.00 from Capital Improvement Fund No. 301 into Grounds Maintenance Machinery and Equipment Capital Improvement Line Item No. 301.333.5533 to go towards the purchase of a pick up truck that was totaled in a vehicle accident.

Councilman Albrecht made a motion to pass the ordinance.

There were no questions or comments. The roll was called. **VOTE: ayes 4 (Mearan; Malone; Albrecht; Haas) – nays 2 (Mollette; Noel) The ordinance was passed. ORD. #48-09**

The Clerk gave a **second reading** to an ordinance authorizing the appropriation of an additional \$13,000 from the General Capital Improvement Fund No. 301 into Garage Line No. 301.117.5238 to replace the wash bay system that recently became inoperable.

Councilman Albrecht moved to suspend the rule requiring an ordinance be read on three separate dates.

The roll was called. **VOTE: ayes 4 (Malone; Albrecht; Haas; Mearan) – nays 2 (Mollette; Noel) 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. #49-09**

At the request of the Acting President, the Clerk gave a **second reading** to an ordinance authorizing the Mayor of the City of Portsmouth to enter into a lease agreement with Portsmouth Murals, Inc. for the purpose of assisting Portsmouth Murals, Inc. in securing a grant from the Ohio Cultural Facilities Commission for additional floodwall murals. The deadline for submission of the necessary documents for this grant is July 30, 2009.

Prior to a motion being made the Acting President asked the Solicitor if he could address some of the questions that were posed by citizens with regard to this item. Mr. Jones reiterated what he had stated at the last conference/work session with regard to the purpose of the legislation. He explained this ordinance will allow the City to assist the Portsmouth Murals, Inc., with their opportunity to receive a grant. Mr. Jones stated that the lease that has been submitted for councilmatic action actually came through the legal department of the Ohio Public Facilities Commission. He noted that the initial lease stated the floodwall itself would be leased, however after some issue were raised, he went back to the Commission’s legal department and requested the language be changed to show that the lease would be for the panels/surface of the floodwall so there would be no questions about the purpose of the lease. Mr. Jones said the legal department of the Ohio Public Facilities Commission agreed to that change and provided Council with a copy of the revised lease. The Solicitor stated it to be his belief as well as the belief of the Ohio Public Facilities Commission that this lease will meet the necessary requirements for the purposes of the grant. He reiterated the fact that the City of Portsmouth is simply providing this necessary interest in the floodwall panel so the Portsmouth Murals, Inc., can meet the terms and conditions of the grant. The Solicitor pointed out the fact that this is not something the City is requiring but rather something that is being required by the Facilities Commission and he was contacted to assist with that and that is what he has done. He noted that he does not have any personal stake in this matter

and if Council chooses not to pass it that will be their decision. Mr. Jones, from his standpoint as the City's legal counsel, again stated this to just be for the purposes of the grant and the scope is limited to the panels/surface of the floodwall. He further noted it to be obvious that if no money is granted then the lease would be null and void at that point. With regard to the deadline, Mr. Jones acknowledged this to be July 30th, saying they have to have the necessary documents submitted for this particular grant cycle which ends in October. He again asked Council to take this deadline into consideration noting what needs to be to the Commission has to be passed by tonight so it can be signed by the Mayor.

In response to Councilman Noel asking if we can get a grant later, if this is not passed this evening, the Solicitor pointed out the fact that it is not the City that is requesting the grant but rather it is being requested by the Portsmouth Murals, Inc., and stated it to be his understanding that the July 30th deadline has been imposed upon them. He again explained the fact that the City is not applying for the grant and are just acting as a facilitator. With regard to previous remarks from citizens who claim the floodwall to belong to the City, and were concerned about a sixteen-year lease, the Solicitor advised this to be the requirement of the Commission, noting they actually require a fifteen-year lease but it was determined that by the time all the paperwork is finished most of the first year will have passed, therefore, it was agreed that the lease should be a sixteen-year lease. The Solicitor reminded everyone that should there be a flood defense problem the Corps of Engineers are primarily responsible for any type repair or damage to the floodwall and this lease in no way affects that. He further noted that if any damage should occur to the flood wall the City will certainly cooperate in all respects to make sure the floodwall is repaired. Mr. Jones again stated that this lease will not affect that responsibility in any way, shape or form. Councilman Mollette stated that when he reviewed this request at the last meeting he really did not have any issue with it until there was some discussion of the issue. He said he was glad the ordinance had only received just one reading because he later learned certain facts. He acknowledged that the Murals, without doubt, belong to Portsmouth Murals, Inc. and he considered them to be their "intellectual property" or "copy righted property". However, he felt the floodwall to be the City's responsibility and the City's property and acknowledged the murals to be an asset for the City. Mr. Mollette said he was disappointed when he read the ordinance, saying he had telephoned the Ohio Cultural Facilities Commission to try to find out the scope of the project since it was not defined in the ordinance. Noting the ordinance to state for "additional flood wall murals", Mr. Mollette reiterated Mrs. Mollette's accounting of what murals were being included in this request. He said he felt the ordinance should be "corrected" to note that the grant is not for additional murals but for existing murals. With regard to the lease, Mr. Mollette stated that after talking with "the same individual that the Solicitor had talked to" he was convinced that the reference to the surface of the wall was what the ordinance should say and felt that maybe that was the way to go. He called the lease agreement as being "very vague, undescript (sic)" noting that it did not indicate the panels to be on the riverside of the floodwall. Mr. Mollette explained that the "stars" are actually on the other side and that the City actually has an investment in them. He noted that the lease did not provide for any limitation of panels nor does it describe whether it is referring to "north side, south side, east, west", saying it does not delineate the number of panels. He again noted the thought was that there would be new murals placed on the wall and said he started asking questions at that point because it is not for new murals. Acknowledging that he is not an attorney, Mr. Mollette said he was just sitting here trying to think about whether or not the City is "doing the best that it should" and questioned as to what the City is "really" giving to the Portsmouth Mural's Inc. He said, "We've already given 'em any additional space that they need for their murals, we've encouraged 'em but this actual property lease, I ask what rights are we, what additional rights are we given 'em". He continued saying it, "It's not descript in here to where I feel it's, it's written well enough to be able to define what those property rights are". He also questioned whether it's "real property" or whether it's just "intellectual", saying, "when you look at intellectual property it says that 'the legal property rights over creations of the mind both artistic and commercial and the corresponding field of law under intellectual property owner's are granted certain exclusive rights to a variety of intangible assets such as music, literary, artistic works, ideas, discoveries and inventions, words, phrases' and then you look at 'exclusive', which it says 'exclusive rights can be established by law and contractual obligations'". Mr. Mollette described this as being almost like the Council would be giving the Portsmouth Murals, Inc. "rather than areal property rights its intellectual property rights". He also felt that to not be defined in "here". Mr. Mollette said that after talking with the "Ohio Cultural Facilities" he was led to believe that the money has been appropriated, which he said "was established by the Governor in the legislative body". He continued saying, "It is their duty to facilitate getting the paperwork to make sure that it's established". Mr. Mollette also claimed the money will be there, saying that right now the Commission is preparing for their quarterly meeting and if the paperwork "is not well defined" his impression is that there would be a ninety-day delay. He also reported it to be his understanding that "the paint work, if this were new murals" would not even be done in this time frame. Mr. Mollette said he was disheartened that he did not get any of his questions resolved because no one from the Portsmouth Murals, Inc. was present this evening to "give an impression of what they're doing and what they anticipate doing". He felt that with that lack of information he would be in favor of just giving this ordinance a second reading in order to review the lease agreement. Mr. Mollette said he also send some information to the Corps of Engineers requesting their input. He said he forwarded them a copy of the lease agreement and the ordinance and asked them to review them and advise if they have any additional language that needs to be added "to better write this proposal/lease agreement". He said he is more in favor of getting additional information.

Councilman Mollette made a motion this constitute a second reading.

The Auditor, in response to a remark made earlier about the City being entitled to these funds, asked the Solicitor if the City has applied for this grant funding or if the City would be losing a dime or the full amount of any grant that might have been applied for by the Portsmouth Murals, Inc. He noted this to be just for clarification that the City is or is not losing any money. The Solicitor said "no" to the questions of whether

or not the City has applied for this grant funding and said “it is not” to the question of whether or not the City is losing any money by the Portsmouth Murals, Inc. applying for these funds.

Councilman Mearan inquired as to how the item would be considered should the vote for a second reading failed. In response the Clerk advised that should the motion for a second reading fail there could still be a motion for suspension of the rule or to table.

Councilman Haas inquired as to whether or not there is any competition for these funds and if Portsmouth Murals Inc. does not get this grant would the funds be given to someone else. He said he did think he understands what the objection is to Portsmouth Murals, Inc. receiving \$250,000.00. The Solicitor said he was not aware of any competition for the grant and again stated that he had been contacted to help facilitate this deadline of July 30th so they could get all their documentation filed so that they could possibly be the recipient of this grant. Mr. Jones said he could not speak as to whether or not there is competition for these funds. With regard to the deadline of July 30th, Mr. Haas asked the Solicitor if this were a time frame that was relayed to him by Portsmouth Mural’s Inc. or by the Commission. Mr. Jones, referring to his records, provided communication from the Advisory Counsel of the Ohio Cultural Facilities Commission. He said he received an e-mail from her in June, in which she indicated the deadline for complete materials for this issue to be July 30th. In response to Councilman Mearan asking if there is any legal problem in passing this tonight, the Solicitor said he did not see any problems. Councilman Mollette said “As far as the issue of why it may have come up that the City government could be a part of it, is the, it says here from the project manager that the \$250,000.00 appropriation awarded by the State is paid for with bond money, the bond documents require the State to require a real property interest in the capital project as well as the project be owned by a 501C3 or a government entity”. Mr. Mollette noted it could be either one and felt the City could administer the money to the Portsmouth Murals, Inc., acknowledging that the City could not use the funding for anything else and that these funds have specifically been designated for that project. Mr. Mollette felt that rather than give a lease on the floodwall, the City could administer the funds. With regard to the “precise terms of the lease”, Mr. Mollette said the “Ohio Cultural Facilities” stated these terms to be issues between Portsmouth and Portsmouth Mural’s, Inc. He continued saying that the Commission will simply review the lease to ascertain if it meets their criteria. Mr. Mollette interpreted the Commission to be saying that it is between the City and Portsmouth Murals, Inc. to determine what the precise language of the lease is. He said he has no issues with the Portsmouth Murals, Inc. and that his issue is with the lease agreement being descriptive enough to know exactly what is being given. He continued by stating that they will be given all the floodwall space and while he did not know of anyone else who might be interested in placing murals on the floodwall, he said it is not an issue of who else is out there and acknowledged Portsmouth Murals, Inc. of being “the representatives in the City of Portsmouth, they own the murals now but the issue right now before you is – what is a proper lease agreement for the real property” noting that to be the floodwall, saying, “which includes the surface and what is the, what rights is it that we are specifically given up?”

In response the Mayor acknowledged Portsmouth Murals, Inc. to have made a large investment in our community, to have contributed greatly to the betterment of our community and to have very seldom asked the City for any help. He said he did not believe anyone could disagree that they have done a wonderful job with what they have accomplished. He noted that all they are basically requesting is a piece of paper that says the City is giving them the right to use the floodwall for murals and he did not see it to be anything more than that but, if wrong, he would stand corrected by the Solicitor. The Mayor reiterated the fact that the City is not relinquishing the floodwall or any money. He further reiterated the fact that the money is specified for murals and questioned why the City would want to get involved when the Portsmouth Murals, Inc. have done such a good job. Noting that they have previously applied for grants and have done this well, the Mayor questioned why the City would now want to step in and “divvy out the money”. He felt it to be ridiculous to be questioning the kind of job they continue to do. In response, Councilman Mollette said he did not believe anyone to be questioning the job being done by the Portsmouth Murals, Inc. but felt “what’s in force is the fact that we have a lease agreement and the lease agreement is one that didn’t come to Council to ask for a legal, real property lease agreement and that’s the issue (*not discernible*)”. Mr. Mollette continued reiterating his remarks with regard to what the City is giving, saying he is trying to make sense of it as to what the lease agreement would entail. He again reiterated his opinion about what he felt was vague language in the lease and again stated that he would like to see more detail.

The Acting President, noting that we have had meetings like this before, deferred to the Solicitor to address Mr. Mollette’s concerns. The Solicitor stated that before this was brought to Council, he wanted to make sure that the lease was going to be approved by the entity that was going to ultimately approve the grant. Mr. Jones continued, saying that the correspondence he received and was also received by Mr. Mollette indicates that he, as the City’s legal adviser, and the Counsel for the Ohio Public Facilities Commission were working back and forth on the terms and conditions of this lease. Mr. Jones stated, “This is something that meets with their approval and will meet the terms and conditions of the lease”. He further stated, “In my opinion, as your legal counsel, I don’t think there are going to be any repercussions other than allowing Portsmouth Murals, Inc. to use the floodwall panels for purposes of putting murals on them”. The Solicitor said he does not have any problem with the term “additional” and is confident that the Commission will not have any problem with it; however, if Council wanted to delete the word “additional” and have it depict “one more mural”, he would be comfortable with that. He again noted this has basically been approved by the Commission and he is submitting it to Council for their potential approval so that it won’t come back at a later date. He said he could not speak for the grant, saying he does not know who controls the allocation or spending of the money but all he does know is that he was told that the deadline is Thursday, July 30th for compliance.

The Auditor said he could not see any reasons why City Council would want to get involved with trying to administer other grants that are applied for by organizations. He stated that the City and Council already has a reputation of being hard to deal with and people are reluctant to come to the City at times when they think they are going to have to go through the hoops that cities in general put before them. Mr. Williams acknowledged the Portsmouth Murals, Inc. to have done a fantastic job and noted that they are not asking for anything more than what can be seen before us. The Auditor continued, saying, "I don't see any reason for the City to become a middle man and a grantor for money that has apparently already been allocated for their purpose and further discourage other organizations from trying to improve the City".

Councilman Albrecht called for the question. The roll was called. **VOTE: ayes 4 (Albrecht; Haas; Mearan; Malone) – nays 2 (Noel; Mollette) The motion carried – discussion ceased.**

The Clerk, for purposes of clarification, advised Council that should the motion for a second reading fail and there is a motion to suspend the rule and it fails, the ordinance will automatically have had a second reading.

Discussion having ceased the roll was called on Councilman Mollette's motion for a second reading. **VOTE: ayes 2 (Noel; Mollette) – nays 4 (Haas; Mearan, Malone, Albrecht) The motion failed.**

Prior to another motion being made Councilman Mollette, for clarification regarding a remark by the Auditor, said, "The reputation the City Council has and the City Government in general, is not just Council, but the government in general has nothing, the issue is, in this case, it isn't the people that's applying for the grant or all the people that's involved in doing the work here, the issue is the proper information so that we can be informed decision makers and I'm frustrated at the fact that when I start getting information that that information is not accurate and that I guess I'm not a rubber stamp, I do my research, I do my homework and I don't rely on somebody to spoon feed me and if somebody has a problem with that then that's their problem but that's a part of the jobs, people should come here and be informed and make decisions based on that information and it is up to the parties that are asking for this information to give us adequate information to make informed decisions rather than just suspending the rules and passing it". In response, the Auditor stated, "other than painting murals on the floodwall, I'm not sure what one would think a floodwall organization might be willing to do with our floodwall". Councilman Mearan stated that in reading the lease agreement he found it to be very succinct, very clear and very unambiguous. He further stated that if there are any hidden or blatant problems, we have to rely on our City Solicitor and noted that the Solicitor has indicated that there are no problems. Mr. Mearan felt that the "argument" is over not the substance but the form and he felt everyone agrees in substance that the murals are good for the City. He said we have to rely on our counsel as to the form and he did not feel that we need six lawyers on Council trying to interpret things, noting that we have a person who is elected to give us legal advise and who has given us his legal advise. Mr. Mearan concluded by saying he accepts the Solicitor's advise and he felt Council should approve the agreement tonight. In response, Councilman Mollette, referring to the lease, noted that it says "floodwall panels" and he questioned if that were on the riverside again saying it was non-descriptive and again calling it "very vague", saying "it is not descriptive on what it implies". Councilman Noel, noting that we already have a twenty-year agreement with SOGP and he feels that the City has lost a lot of grants because of that agreement and he is against giving a sixteen-year lease.

Councilman Albrecht moved to suspend the rule requiring an ordinance be read on three separate dates.

The roll was called. **VOTE: ayes 4 (Mearan; Malone; Albrecht; Haas) – nays 2 (Noel; Mollette) The rule was suspended.**

Councilman Albrecht made a motion to pass the ordinance.

There being no questions or comments, the roll was called. **VOTE: ayes 4 (Mearan; Malone; Albrecht; Haas) - nays 2 (Mollette; Noel) The ordinance was passed ORD. #50-09**

The Clerk gave a **first reading** Ord. authorizing the appropriation of \$50,000 from the General Capital Improvement Fund No. 301 into Sanitation Miscellaneous Line Item No. 301.778.5533 to make needed repairs to the Transfer Station so it will meet EPA requirements and considering the same as 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 Mayor advised Council that there have been some changes and updates with regard to this issue and noted the presence of the Service Director who can explain those changes and will possibly need to request an amendment to the ordinance. Mr. Murphy informed Council that his department received a letter from the EPA regarding a violation at the transfer station. He said his department was aware of some minor repairs that

needed to be made and this ordinance was to request the needed funds. Mr. Murphy explained that since this request was made other developments have occurred. He explained that the transfer station itself is no longer operational and has been closed since last Wednesday. Mr. Murphy reported the cylinder that was going to be repaired has failed thus making the facility inoperable at this point. He said all the City's sanitation trucks now have to be put on the road to transfer solid waste to Pike Sanitation's landfill and dumped. He reported this to be almost a two-hour round trip, which is an added fuel expense and in the meantime the City is losing revenues and host fees that are normally received from that facility. Mr. Murphy said he immediately contacted some people to look at the equipment and it has been determined that the cylinder, itself, is beyond repair. He said the cost of replacement would be approximately \$40,000.00 or more. He said he has also been in contact with a company, Mac Industries out of Indianapolis, Indiana, that specializes in refuse systems, specifically compactors, and they have a used unit that was installed by them in a factory that subsequently closed. Mr. Murphy said the unit is only about one-year old and has been inspected by Mac Industries. He reported Mac Industries have offered that unit, which has a warranty, for sale to the City for \$45,000.00 plus a \$500.00 freight cost. Mr. Murphy stated the \$45,000.00 would be almost the cost of just a ram. Mr. Murphy said the present unit is nearly twenty years old and has served the public well. He said there has been a constant need for repairs to it and it has become a case of throwing good money after bad. He described the offer from Mac Industries as being "a good deal" and acknowledges that he has not received a cost for installation and the cost of renting a crane. He said, if everything goes as planned, the facility can be in operation within ten day, otherwise it would be anywhere from three to four months. Mr. Murphy requested the ordinance be amended by increasing the requested amount from \$50,000 to \$65,000, noting this would cover the cost of installation and the rental of the crane. He said he would make every attempt to try to rent a crane for as little cost as possible but wants to make sure there is enough money available in case he cannot secure a crane for less than the estimated cost.

Councilman Mollette noted that this action would eliminate a lot of liability to the City with the sanitation trucks having to travel on the highway to Piketon and back. Assuming this to be an emergency associated with environmental issues and cost, he inquired how this can be approached from that standpoint. He asked if Council approves this would it meet all the state requirements. In response, the Auditor said he believed Council would continue with the ordinance as it would be amended from \$50,000 to \$65,000 and noted it to already include the emergency measure and noted that to be the only requirement. In response to Mr. Mollette inquiring as to the bidding process, the Auditor reminded him that the emergency designation would bypass any bidding requirement. In response to Councilman Albrecht inquiring as to whether or not the additional \$15,000 is available, the Auditor confirmed the funds to be available as a result of Council not depleting the CIP Fund last year and thereby saving some funds for emergencies.

In response to Councilman Mearan asking if the ordinance should also be amended to indicate instead of repairs the funds are needed for a replacement Mr. Murphy said he did not know how it should be legally worded but the bottom line is that he needs a unit and this is what he needs in order to do that. The Auditor concurred with Councilman Mearan and suggested that following repairs there should be inserted "replacement" thus the ordinance would indicate the amount of money needed, identify the emergency and provides the Service Director the ability to do the job whether it is for replacement or repair.

Councilman Mollette made a motion to amend the ordinance to reflect an appropriation of \$65,000 and to add, following "replacement" following the word "repairs".

There were no questions or comments on the motion. The roll was called. **VOTE: ayes 6 – nays 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. #51-09

The Clerk gave a **first reading** to an ordinance authorizing the Mayor of the City of Portsmouth to enter into a contract with Service Pump and Supply of Huntington, West Virginia to construct a high service pump upgrade for Water Treatment Plan Improvements with funding to be accepted and appropriated as received into Water Works CIP Fund No. 606, and repaid from Water Works Surcharge Fund No. 603.

Prior to a motion being made the Mayor advised Council that the Director of Water Works, Sam Sutherland, is present to answer any questions.

In response to Councilman Albrecht inquiring as to whether or not this is an emergency, Mr. Sutherland confirmed that it was in order for all the paperwork for the loan to be in order by the deadline for the stimulus money.

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 reading the directive from the ordinance with regard to acceptance and appropriation of the funds, asked if this were a standard procedure. The Auditor said he was not fully aware of the structure of the ordinance and deferred the question to Mr. Sutherland. Mr. Sutherland advised the length

of repayment to be twenty years and the Auditor noted repayment would be from Water Works Fund #603. He also acknowledged that he and Mr. Sutherland did discuss the fact that funds are available and noted it would be necessary to have a CIP fund from which the project could be done. He noted repayment of the loan could come from that fund or from the Debt Retirement Fund within the Water Works. Mr. Mollette said he was confused as to why the funds would be accepted into a CIP fund but repaid from a surcharge fund. The Auditor explained that the funds will be accepted into Fund #606, which is where the expenditures for the project will be, however the repayment of the loan will come from the fund where the money is available.

There being no further questions or comments the roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #52-09**

The Clerk gave a **first reading** to a resolution to apply for, accept and enter into a Water Pollution Control Loan Fund Agreement on behalf of the City of Portsmouth for planning, design and/or construction of wastewater facilities and designating a dedicated repayment source for the loan.

Prior to a motion being made the Acting President inquired of the Director of Waste Water, Richard Duncan as to the status of the long-term control plan. Mr. Duncan explained that the Long-Term Control Plan (LTCP) was submitted to USEPA and he has brought with him copies of the plan for members of City Council. He said he will also submit an executive summary that goes along with the plan. He noted this to be separate from any kind of approval of the LTCP. Mr. Duncan, with permission, addressed Council by providing them with information regarding his working with grants during eleven years of his sixteen year service to the City. Mr. Duncan pointed out the fact that during that time he not only applied for many grants and was very active in securing grants for the City as well as working actively with those organizations that reviewed and approved those grants. Off the top of his head, Mr. Duncan provided Council with the following as an example of some of the grants for which he was responsible in securing:

- \$1,000,000.00 toward the construction of Basham Water Tank – a 1.6 million gal. tank
- All the funding for the transfer station ½ grant through the OPWC – ½ loan, which took the City's garbage trucks off the highway and also provided income from the use of the station by others.
- ODOT \$1,100,000.00 grant to repave Kinney's Lane, replace sidewalks, curbs, an existing deteriorated wall, sewers and waterlines in that area with all work being paid by the grant.
- Grant funds to replace an 8 inch line for a 12 inch water line to the West Side that alleviated their problems with low water pressure, which made it difficult for them to do laundry or take a shower, resulting in bad publicity for the City.
- Grant funds for the New Boston force main to treat waste water from their village resulting in revenue for the City of Portsmouth and instead of having less sewers for which the plant was designed, we now have enough sewage to meet the design capacity. He noted this to be at no cost to the City.
- The two large water tanks at Rosemount, which are a part of the City's water system, were constructed with grant funds.
- A grant to rebuild the deteriorated bridge spanning the Little Scioto River in Sciotoville, noting this to be a bridge that the State was ready to condemn and has now been certified.

Mr. Duncan acknowledged there to be a lot more grants that he could cite, if he had his notes with him but he just wanted to make a point of the fact that he is very active in securing grants for the City and he tries to plan ahead and stay informed about what grants are available. He noted that the Auditor can substantiate this fact. He said he spends his entire work day trying to find ways to improve the system or assist the City financially and for that reason in October 2008, when he was made aware of the possibility of stimulus money that might be available, he approached City Council requesting approval to hire a consultant because it was necessary to plan ahead and have plans prepared for the applications. He noted this to be necessary in order to increase the City's chances of securing funds. He noted Council to have approved his request in January 2009 and allocated \$170,000.00 for the preparation of plans for improvements of the waste water treatment plant. Mr. Duncan acknowledged that, at that time, he informed Council that the amount would be between 6 and 7 million dollars worth of improvements, which he described to Council as being clarifier improvements, secondary clarifier improvements, trickling filter improvements, a new belt filter press, new SCADA system, the maintenance garage and a number of other items that were really badly needed. He pointed out that all of these things were in his plan of what needed to be done in the next five years. Mr. Duncan said he also explained to Council at that time that these are plans that needed to be done regardless of whether or not the City received any stimulus funds. Mr. Duncan felt some of these things needed to be corrected before the City is faced with some major failures of the treatment plant. He acknowledged his department to have been on a very ambitious, very tight schedule to get these plans completed. Mr. Duncan advised Council that the guidelines for the economic stimulus money were not set in stone until just a few months ago. He said the City did not know for what they would be able to apply, what would be funded or what amounts would be approved. He stated that all that was known was that the City was told constantly that shovel ready plans were necessary to have any chance of receiving these funds. Mr. Duncan advised Council that he has brought with him plans from the consultant that was just received this week. He also provided some photographs that show the conditions of the equipment at the treatment plant that needs to be upgraded and repaired. He noted the condition of the plant is not from lack of maintenance or care but due to the age of the equipment and their service life and further noted that everything that is being replaced is at least twenty years old. Referring to the council letter received by Council last year, Mr. Duncan noted it to have specified 6 to 7 million dollars in improvements were planned. He said the engineering study began in good faith, prior to

the passage of the ordinance earlier this year and had that not happened the project would not have been ready to go out to bid. Mr. Duncan advised that he has been to dozens of meetings with the Ohio EPA and USEPA in Chicago and three weeks ago he took part in a conference call with Tracy Bruny of the Ohio EPA and she provided the City with a schedule of things that she would like the City to abide by in order to make sure funding is secured for the project for which the City has already applied. Mr. Duncan said she informed the City that it needs to be advertising and opening bids in September if we want to receive the funds. He acknowledged that the advertising has already been done per the plans. He said this was done in order to meet the deadline set by the Ohio EPA. He further stated that Ms. Bruny is the one who said the ordinance needs to be passed before the end of the month in order to have the best chance of getting the money. Mr. Duncan said this teleconference, which occurred about three weeks ago, however the information needed to put the ordinance together did not arrive until a week and a half ago, which is why it became necessary for him to ask Council to add this ordinance to this evening's agenda. With regard to any other projects, Mr. Duncan stated that the City did apply for \$20,000,000.00 for a dedicated sewer to serve the upper area of Grandview. He reported the minimum it would cost to build the pipes to transfer the clean storm water, before it gets into the Lawson Run Sewer on Grandview would be \$20,000,000.00 to pump that to the Scioto River. He said at the time of the application it had not yet been established that no city in Ohio would get more than \$5,000,000.00 and the City had hoped that it would receive the whole \$20,000,000.00. Mr. Duncan further stated that the City did not even know if each project was going to be limited or if there was going to be a limit for the entire city. He said the application was submitted at the last minute and was based on a phone call from Ohio EPA who suggested that we submit an application on the hope that it might be granted even though it was for \$20,000,000.00. Mr. Duncan said when the City was placed on the priority list we were advised that we would receive \$5,000,000.00 for a \$20,000,000.00 project. Mr. Duncan said he discussed this with the Mayor and the Auditor, saying that in order to receive the \$5,000,000.00, the City would have to commit to borrowing \$2,000,000.00 to match the \$5,000,000.00. He reported the financing for \$15,000,000.00 is about \$1,000,000.00 per year. Mr. Duncan, noting the entire sewer budget at present is \$2.3 million, it would have meant that the budget for his department would have to be increased from \$2.3 million to \$3.3 million in a very short period of time in order to have the funding to do the \$20,000,000.00 project. He acknowledged this to be something that would be very nice to do but noted it would mean we would not get any funding for the project for which we already had plans – the Waste Water Treatment Improvement project. He reiterated the fact that the maximum funding for any city in the State of Ohio, including Cleveland, Columbus, Cincinnati, Akron, Canton, has received has been no more than \$5,000,000.00 unless they have a "green project". Mr. Duncan acknowledged there to be some "green projects" that received additional funding, but for a regular wastewater project no one received more than \$5,000,000.00. Mr. Duncan, noting the City of Portsmouth to have received \$3,000,000.00, said there are a lot of cities, a lot bigger than Portsmouth, who did not receive any funds. He said he has attended meetings about this and has learned there have been lawsuits filed by some cities that did not receive any funding but felt they should. He reported the grounds for the lawsuits is because a lot of the unfunded cities applied for funds on projects for which they did not have any plans and they would not be able to complete construction in a timely manner. Mr. Duncan said he can truthfully state that the most the City could have received is \$5,000,000.00 and what he applied for was \$3,500,000.00 because it is a \$7,000,000.00 total proposed scope and the most that would have been approved was half of the cost. Mr. Duncan felt the City to be very fortunate to have gotten this amount. He reminded everyone that the City already had \$1,000,000.00 committed from the OPWC which now gives the City \$4,000,000.00. Mr. Duncan advised that in order to qualify and actually get this funding, the City has to be able to show the Ohio EPA that we have the access to the balance and the only way that can be done is by borrowing and that can be done through the Ohio Pollution Control Loan Fund or from the Ohio Department of Development Authority. He acknowledged that the resolution before Council this evening authorizes the Mayor to apply in October for the Water Pollution Control Fund. Mr. Duncan advised Council that if the resolution is not adopted, the City can still go back to the Ohio Pollution Control Loan Fund and apply for funding through them but the schedule provided to the City requires the legislation to be passed before the end of this month in order to satisfy the schedule given to the City by Tracy Bruny of the Ohio EPA. Mr. Duncan offered to provide Council with her phone number, saying he was sure she would confirm this. He noted that if the legislation is passed in two weeks the City still might get the funds, however he is doing what he was asked to do by Ms. Bruny. He reiterated the request, which was to advertise twice in a newspaper and to pass the legislation. He noted the advertising of the plans for the Waste Water Treatment Plant improvements to have already been done and in response to the Acting President, Mr. Duncan explained the content of the ad and stated the bid opening will occur in mid August, a date, which Mr. Duncan said, was also determined by the Ohio EPA. Councilman Haas, saying it appears to him that there is \$300,000.00 that is in the state grant, which does not have to be paid back, \$3,000,000.00 in a federal grant that does not have to be paid back, \$700,000.00 from the OPWC, which is a 20-year 0% loan and a \$3,000,000.00 20-year loan for 3.43%. Mr. Duncan confirmed these amounts and time frames to be correct. With regard to the loans, Mr. Haas inquired as to the debt service. Mr. Duncan explained that the 0% loan to entail a payment of \$35,000.00 per year for 20 years; the \$3,000,000.00, if we take this entire amount, Mr. Duncan believed it would be paid back at \$200,000.00 per year. He expressed his hope that we would need less than the \$3,000,000.00. Mr. Duncan also stated that payment will not begin until about one year following the completion of the construction. Mr. Haas reviewed the fact that we would have been eligible for \$5,000,000.00 and there was a need for an additional \$15,000,000.00. Mr. Duncan also confirmed this to be correct. Mr. Haas asked if this is what he was talking about that would be \$1,000,000.00 per year for debt service, which would have been on top of the \$335,000.00. Mr. Duncan agreed with Mr. Haas' remarks regarding the debt service but advised him that the City would not have gotten two projects, saying "our choice was one or the other and the most we could get was \$5,000,000.00". The Auditor noted that both projects still need to be done. Mr. Duncan again pointed out the fact that he has copies of the project for Council and again noting the age and condition of the present equipment. With regard to the improvements, Mr. Duncan explained that one of the things that will be done is

that fabric covers will be provided for the primary clarifiers, which he described as being one of the most odor producing parts of the treatment plant. He said this will provide a way of controlling the odor in that neighborhood. He said this would not only reduce the odor it will also reduce maintenance. Mr. Duncan noted another problem was odor from sludges and noted this is being taken care of with the present improvements that are being done. He said the new SCADA system allows any employee to sit at a computer and determine what is happening at each pump station, noting that the present equipment being used by the City is over twenty years old and does not provide reliable information. Mr. Duncan also advised that the sewer crew is working out of a trailer that is over thirty years old and one of the requested improvements would provide this crew with a new garage. He noted this will also allow for storage of equipment, noting that at the present time the City has pieces of equipment costing \$250,000.00 that are sitting out in the rain because there is no protected place in which they can be parked and felt there should be no reason why they should be parked outside, especially if we can get a grant to build a garage.

Councilman Mollette inquired as to what kind of a rate increase is being considered in order for the City to meet the expected \$235,000.00 yearly payments. Mr. Duncan explained that the long-term control plan, in accordance with the EPA requires spending up to a certain level of affordability. He further explained that right now our sewer rates are 1.27% of median household income. Mr. Duncan stated that according to the EPA, affordability is 2% so by the time we are finished and implement the long-term control plan our rates will increase from 1.27% to 2% of median household income. Mr. Duncan said what the City is asking them to do is let us phase that increase in over a long period of time- such as ten years, but whatever amount of time granted, eventually we will be at 2% of median household income, noting you can take 2 and divide it by 1.27 you will know the amount of the increase over a period of time. Acknowledging we already have some debt service that will be coming off he said it will not necessarily be all new debt service. He further noted that this will depend on whether it will be necessary to borrow the full \$3,000,000.00 or if we can get by with less than that. He again explained that payment on the debt service will not begin until a year following the completion of construction. In response to Mr. Mollette inquiring as to the 2% rate being our maximum or minimum charge, Mr. Duncan explained this rate to be our affordability index. Mr. Mollette expressed his appreciation to Mr. Duncan for his efforts to keep up with needed improvements. He reiterated previous remarks he has made with regard to infrastructure, communication and his past requests for updates and open meetings to keep the public informed. He expressed his belief that there was time between the advertising of the project and the date set for bid openings to apprise everyone earlier of these plans so that people would have had more time for discussion and information could be disseminated to the public so they could be more informed. Mr. Mollette said he was frustrated with not being more informed so he could answer questions from the citizens. He agreed that the items being requested are things that need to be addressed and again asked if we would still be under the City's affordability index if we chose to go with the long-term control plan and stated he would also find that acceptable. In response Mr. Duncan expressed his regret with regard to the timing of this and again noted this to not be his doing. He said he tries his very best not to ask Council to pass something without three readings, noting that the engineering request was brought to Council in October and it was not passed until January. However, he pointed out that in the case, while the advertising was done on the 19th of July, the telephone conference with Tracy Bruny was the week before the ad appeared in the paper and then she did not provide the City with the information it needed for the legislation until the following week, which was after a Council meeting. He advised Mr. Mollette that he did not get the information until last week because he did not get the needed information until the beginning of last week. Councilman Mollette asked for clarification on the information that he heard that said this resolution as to be finalized by October, saying he felt that time line would give Council the ability to give this a first reading. Mr. Duncan explained that the Ohio Water Development Authority has monthly meetings and it will take that long to get the paper work together to get it to the OWDA, who handles the Ohio Water Pollution Control Fund. He said when OWDA has a meeting in October that's when they will hopefully approve this loan but to meet the schedule that EPA has given us, they want this ordinance passed to show that those cities receiving funding has all their ducks in a row. Mr. Duncan reiterated the fact that lawsuits have been filed by cities who felt they should have received funding. He said that is why the City has been asked to pass this legislation now, noting it to be the standard they are going by. Mr. Mollette acknowledged this to be how things were done when he worked for ODOT. Mr. Duncan noted this to be especially competitive and reported being at a meeting in Columbus where the person in charge of awarding these funds to all the communities was in tears, after hearing some of the pleas for funding from various communities, because of all the stress of having such a short notice to prioritize a list. Reiterating the fact that the City was lucky to receive the funding it has, he said he would have done anything he could to secure more funding but it was not possible.

Councilman Albrecht stated one of the reasons he would be in favor of this project is because a part of his ward is located in the area of the sewage treatment plant and they have been long suffering from the odors coming from that plant. Mr. Duncan expressed his amazement at the patience of those people. Mr. Albrecht said he gets a lot of calls but the people realize there is not a whole lot that can be done but if this would help then he will vote for it.

The Mayor, for purposes of clarification, acknowledged a person tonight referred to there being no flooding problems during the recent heavy rains and credited that to the fact that the gates were down. The Mayor said he believed that to have been checked and that everyone who has looked at the system's hydraulics and understand the flow of the water from it has said the gate does not have an affect on the Grandview Avenue residents whether the gates be up or down. The Mayor, asking Mr. Duncan to correct him if he were wrong, stated that if there were flooding problems they would start at the plant and go backwards. Mr. Duncan said that is what he believes and acknowledging there to be a lawsuit on this issue, said the plaintiffs in the lawsuit have an expert witness who is an engineer from Ohio State who has given his opinion that their could

be an affect from that. Mr. Duncan said he does not agree with that opinion but acknowledged that he is not a PHD. Mr. Duncan explained, saying if the Scioto River were dammed it might cause Portsmouth to be flooded but it is not going to cause Circleville, Waverly or Piketon to be flooded. He said that to him that is the same comparison, noting it to be a six foot gate that is raised to hold up more flow so it can be treated. He said when the gates are lowered all the waste water, following a storm, goes into the Ohio River. He said in the past the gates were always raised to hold back the sewage so it could be treated. Mr. Duncan said we have never had flooding on Charles Street, Jackson Street or Gallia Street, saying the flooding whether the gates are up or down, in the area of Grandview is in the section of the Lawson Run Sewer between 23rd and 25th Streets. He described this area as being a bottleneck with no slope and historically there has always been flooding there. Mr. Duncan further advised that calculations done by Strand shows that flooding to relate to storm intensity of every three to five years, saying, “when it rains that much, that’s the maximum flow that can go through that pipe”. He said Strand has calculated that every three to five years the City will have a storm that will exceed that flow.

At this point, Jane Murray arose from her seated position in the audience and began railing at Mr. Duncan’s remarks. She ignored repeated gavel rapping and requests from the Chair to take her seat and be quiet.

Following order being restored, Councilman Mollette, for clarification, acknowledged the items on the list for improvement are things that need to be done and expressed his appreciation to the availability of grants and the percent of interest that will be paid saying, “It looks affordable” however he felt there to be a big difference between smelling the odor coming from the treatment plant and having sewage flooding your basement. He said that should never be acceptable. Noting this to have been a long-term issue he questioned why steps have not been previously taken to correct the problem and what is going to be done to prioritize that problem and let those citizens know in that area that the City does care. He acknowledged this to be a side issue to the one at hand but felt it tied in from a priority standpoint and a communication point. He reiterated previous remarks he has made with regard to this issue and previous requests he has made with regard to updates. He acknowledged that the next hard rain could cause flood damage “until we get something that is a temporary fix until we can get the long-term”. Councilman Noel stated it to be his understanding this could endanger the City’s ability to get future grants for the sewer system, saying, “This we are living with it and these people that’s getting flooded out and in some cases they can’t live with it and they’ve had to move out”.

The Mayor said maybe he should not have said anything but he wanted to clarify a statement that was made that may have not necessary been true. He said he did not think this to be the time or place to debate what is in litigation at this time. The Acting President expressed everyone’s discontent with having to make a decision on the spur of the moment and acknowledged something definite needs to be done in the Grandview area. Further acknowledging that situation needs to be a priority, Mr. Malone said he also knows we have already approved this particular project and cannot go back on that. He felt there to be a real need to try to find some way of addressing the Grandview Avenue problem. He acknowledged that he does not know how both issues can be addressed but felt the long-term control plan needs to be implemented for the sake of those individuals who have had to deal, for so long, with this problem. In response, Mr. Duncan, referring to depositions from the people involved in the lawsuit, reported there to be a range of experiences, which involved a few inches of water to several feet of water. He said he felt each case needs to be looked at individually. He questioned whether a backflow would address the problem of those who only had a small amount of water in their basement or if it would take some bigger measure. He said those people in that area that have backflows or sump pumps do not necessarily experience the same problem as someone else might. He said even the \$20,000,000.00 project that the City is looking at would have addressed getting a lot of that storm water out of the sewer to reduce the amount of sur charges, but it would not always address it, saying it may reduce the frequency from every 3 to 5 years to every 10 – 20 years. Mr. Duncan said to build something big enough to pump that much water would be very very expensive. He said the revised long-term plan that will be received by members of Council, states that each resident needs to be looked at individually and come up with a plan for each resident. In response to the Acting President, Mr. Duncan said the plan would be available to anyone in the public who requests a copy. The Auditor asked Mr. Duncan if he were saying that to spend \$20,000,000.00 for the Grandview Avenue area would not actually cure the problem but would just delay the frequency. Mr. Duncan confirmed that to be true. In response to the Auditor asking if there were an amount of money that would actually potentially fix the problem, Mr. Duncan said a number of scenarios were considered from using different sizes of pipe, pumps and holding tanks to some other proposals that would cost \$50,000,000.00. He said the \$20,000,000.00 was the minimum that was felt would do any good and would make a significant difference. He acknowledged that it may not have always solved the problem.

Councilman Mollette said he did not have any further questions with regard to this particular work that is to be done and reiterated his remarks about conducting a public forum that allows for questions from the public to be answered. The Acting President expressed his concern about the possibility of the City losing this particular grant due to inaction. Mr. Duncan concurred.

Councilman Mollette moved to suspend the rule requiring a resolution with the weight of an ordinance be read on three separate dates.

The roll was called. **VOTE: ayes 5 (Mearan; Malone; Mollette; Albrecht; Haas) – nays 1 Noel**
The rule was suspended.

Councilman Albrecht made a motion to adopt the resolution.

There being no further discussion the roll was called. **VOTE: ayes 5 (Malone; Mollette; Albrecht; Haas; Mearan) – nays 1 (Noel) The resolution was adopted. RES. #08-09**

STATEMENTS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Tim Hartlage – 1555 Jackson Ave. disagreed with Mr. Duncan with regard to no flooding on Charles Street, saying where he grew up they had flooding all the time. He noted the problem to be all over the City and not just on Grandview Avenue. He said he did not know why everyone is so concerned about Grandview and asked about the rest of the citizens. He pointed out that everybody pays taxes and everyone has problems. Mr. Hartlage reported having called Mr. Duncan last summer with an issue regarding the sewer behind his house and it was fixed. He said he can now sit outside and it is wonderful even though it is still raining. He felt that “people need to back off”.

With regard to grants he said if he were a City employee trying to secure grants he would be embarrassed to ask the state or federal government for grants after the abuse that the City of Portsmouth has done in the past with grants. He said he knows for a fact, noting he has a friend who worked under Governor Voinovich’s and he told him (Mr. Hartlage) that Portsmouth was granted \$3,000,000.00 to renovate the riverfront and felt the work that was done did not cost \$3,000,000.00. He criticized the bleachers in front of the amphitheater, saying “the former Mayor should have been shot”. He claimed that was not how it should have looked. He suggested making the grants work and claimed the problem is not just with the City but the abuse applies to other entities.

Jane Murray – 1920 Dorman Drive apologized to Mr. Duncan saying she had received her material about an hour before she arrived at this meeting and in trying to rush to get out the door and feed the dog, etc, she was not able to review all her documentation carefully enough. She admitted that Mr. Duncan was correct about the maximum amount being \$5,000,000.00. She claimed the point of her outburst was that the public policy discussion and debate of priorities should rest with City Council and she felt it did not in this case. She felt that because information is not given to the public they only have an opportunity to talk at Council and Council talks at the public. She noted there to be no opportunity in this form of government for dialogue and questions. She reiterated remarks about repeatedly requesting a public hearing about these problems. She claimed to be aware of well over 150 properties that are severely affected by sewage backup and noted them to be in other wards of the City. Noting those that she claimed were affected last summer, she said the engineers were astonished at the pervasiveness of the problem. She said she did not have any problems at her home until the fall of 2006 and claimed that to be because the City had allowed development to continue to occur without compliance to ordinances and the storm water regulations. Ms. Murray continued by reiterating previous remarks she has made with regard to this issue and asking this government to require its staff to comply with ordinances and claimed she fought with regard to the development of property on top of Old Post Road. She noted two public officials on the Planning Commission advised her that her comments were irrelevant she claimed allowing this development has caused “massive problems” to “persons and to the public”. She also claimed the taxpayers are being expected to pick up the cost of the runoff from that property. She claimed this form of government to be dysfunctional and claimed there to be way in which the public could work with this government, saying if they have the information they could provide better information to the government. She said, “I wouldn’t make misstatements that offend Mr. Duncan because she has to search for it no matter what her day was planned, she had to stop today and try to get more information. She claimed the bottom line to be that Council is the policy making and budget making body and the executive is to bring to Council the best plan after they have had through review of the public. She urged Council to follow her beliefs as a function of government.

Alan Barlow – 2017 Waller Street said he owns two houses in the City both of which have water problems. He said two weeks ago, following a bad rain there were snakes on his front steps. He said he understands that this problem has been in existence for a long time and he knows the reason that it has been. He said because he lives on a hill the water comes down the hill and that’s where the rodents go. He said he understands that but, referring to department heads, he said they presented a comprehensive plan of what needs to be done and he wants to know if there are staff meetings. Mr. Barlow felt the information provided to Council by these department heads was something that should have been presented by the Mayor and he should have had that information long before the citizens came here this evening. He claimed Council to have passed an ordinance that gave the citizens a tax increase, but did not know if Council realized what they had done. He said the Mayor should have known that this was going to be an issue today. He claimed that no one reports to the chief of staff and that they just approach Council with what needs to be done. He claimed the department heads to be doing a good job, calling them “detail people” and accused the Mayor of not listening to them. He repeated Ms. Murray’s remarks about this government not being functional.

Eileen Perry – 1410-16th Street, with regard to tonight’s conversation regarding sewage problems, felt some of these properties needed to be leveled. She claimed some people spoke with dignity tonight while others were going after someone sitting at these tables. She also claimed someone on Council wants to put an income tax on the ballot. She again claimed taxes to be increasing in order to pay salaries. She also stated there to have been something on the 5:00 o’clock news with regard to “the rock”.

Harald Daub 1221-21st Street claimed the City to have a lot of nerve leaving equipment out in the rain when it owns two buildings and suggested this equipment be put in the Adelpia Building or Spartan Stadium, saying the City owns a lot of property and should try to do something with it. He again claimed there to never

have been any attempt on the part of the City to sell or lease buildings the City owns.. He described the riverfront as being in a shambles and that the “boat dock” has not been cleaned. He also felt that Council should do more than attend two meetings a month and again suggested the possibility of putting equipment in the buildings that the City owns.

Teresa Mollette – 1705 Franklin Blvd., reiterated her remarks regarding checks and balances and described citizens as being those checks and balances. She claimed members of City government who try to influence citizens from actually speaking at these meetings and interfere with their democratic right, saying, “They are here to judge you” and claimed that to be part of their right “as part of the USA”. She claimed the City official berate people after they make comments at this podium during their time to speak. She called it disgusting and said people have a right to speak and to have an opinion. She also said they have a right “to demand respect, competency and the best for them”. She continued saying, “We get tired of standing up here listening to deliberation deception”. She claimed there to be a few who do their homework but others are regurgitating what others have told them to say. She claimed some members to be disgrace to their positions. She said when it comes time for Council to speak she expects to be criticized by the Mayor, the Auditor and sometime by Council for having the right to criticize anybody she wants saying this is a part of our constitutional rights. She said it was her right to see that Council does their job and they should prove to the people in these chambers that they know how to do their jobs. She said they would not be here long if they did not, saying, “You have a community now that has the availability of Internet producing whatever they want on the computer and putting it out there to get the information out that you guys aren’t doing your job – that is our right, that is our right to do that”. She expressed her hope that anyone sitting at these tables has aspirations to do what is right for the citizens, saying “If you don’t, get out”. She claimed that it has been proven to her tonight and in the past is that City officials don’t have any aspirations and asked if it were do to lying, incompetency. She told them to look at their enter self and see what they are doing to the City of Portsmouth. She said she hesitates to refer to this panel as “Council” or as the “legislative body” and again accused them of “regurgitating words” or “just passing whatever we want to pass”. She reiterated previous remarks with regard to a “comprehensive plan” in order to move the City forward and again claimed the government to be running away people who might want to live here. Acknowledging the Solicitor to be the legal advisor of the City, Mrs. Mollette called herself a citizen with the right to challenge him at any time whether at this podium or in a court of law. She also claimed to have the right to challenge any attorney anywhere.

Miscellaneous business and reports:

City Clerk’s Report

1. Received on July 20th, from the City Auditor, the following reports for the period ending 6/30/09:
 - Combined mtd/ytd expense report
 - Mtd/ytd revenue report
 - Combined mtd/ytd fund report
 - Mtd bank report
 - Appropriation transfer from transaction listing

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 a citizen’s remark, stated that he does talk to his department heads and they are present to answer any technical questions.
2. He again announced that there is going to be an open forum held with regard to the long-term control plan.
3. He again noted there to have been no tax increases.
4. With regard to the Adelpia Building he reported it is being used to store equipment being used by the Reutilization Program. He noted that our big vector trucks will not fit in the front door of the Marting’s building.

The Mayor’ 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:

- 1st Ward Councilman Mearan noted Mr. Barlow to be having water problems and felt it to be a problem throughout the City. He acknowledged to Mr. Barlow that sometime

these meeting create frustration but noted there are rules that have to be followed. He said he was sorry his proposal did not get attention but he would appreciate it if Mr. Barlow would give him a call and he will check into the matter for him.

With regard to comments that were made about members being told how to vote, or what to say, Mr. Mearan said he can only speak for himself, saying “nobody tells Mike Mearan how to vote or what to say, I’ll speak my peace”. He reported that every vote he has made on Council, he felt, has been made in the best interest of the City. He acknowledged not always being on the right side and he can accept that and go on and named the issue of the City Building as an example. He said even though he has accepted it he still feels there to be a problem that needs to be discussed and asked that it be considered for the next conference agenda. He also noted there to be an issue proposed by the Mayor at the last meeting and there was a forgone conclusion that he would vote for it but after giving it a lot of consideration he voted “no”. He said he still feels this to be an issue that needs to be discussed and encouraged all those citizens who have all these complaints to come forward with some solutions.

Mr. Mearan said he is not here to micromanage the City and he felt there to be very competent people sitting here that know how to run our City and Council depends on them to manage it, noting it is not his job to tell the chief how the police department should be run but in case of a question regarding the purchase of a fire truck then he votes in the best interest of the City. He said he will stick with every decision he has made as a member of Council and will not make any excuses.

He said he respects everyone’s right to get up and everyone should have a right to criticize and he would defend that right for everybody.

2nd Ward Councilman Malone had nothing to report saying he turns in his ward’s complaints to the proper department therefore there is no need to address it at a meeting.

3rd Ward Councilman Mollette thanked the Service Director for addressing an issue he brought up with regard to Hutchins St., saying the constituent was satisfied with the work that was done.

He reiterated his opinion with regard to allowing two-way conversations with the public saying it falls to Council and as a whole they can press an issue to provide a reason as to why an issue isn’t being addressed. He felt Council can change the rules to allow more communication.

He thanked everyone for their attendance this evening and for their remarks.

4th Ward Councilman Albrecht thanked the Police Department for their efforts on ridding Campbell Avenue and 8th Street of prostitutes and commended the Fire Department for their fast action on a fire in Sciotoville,

5th Ward Councilman Haas had nothing to report.

6th Ward Councilman Noel said he wholeheartedly agreed with Mr. Barlow about there being more flooding than that which occurs on Grandview Avenue. He claimed there to be a lot of flooding in the 6th Ward, which he felt was because the City neglected to make people follow the EPA regulations. He reported a lady in his ward had spent \$1,000 of her own money to fix a road because the City allowed a person to build a pond above her on other property and it overflows and washes out the road. He said he is still working on the flooding problems incurred by his aunt, saying she suffered total devastation.

Mr. Noel commended Mr. Duncan and said we need a plan to straighten out this City.

With regard to grants he reiterated his previous remarks regarding a grant, with which he was familiar, and which was abused many years ago. He claimed this abuse to have been happening for the past 45 to 50 years.

The Auditor reported having provided the Mayor with an update this week regarding General Fund and Enterprise Fund revenues and stating that so far it is not looking very good. He noted that these funds are not doing as well as hoped but noted there to still be half a year to go. He said he will finalize the numbers and the report and give them to the Mayor for his consideration.

With regard to the term “tax”, the Auditor concurred that taxes were not raised tonight but noted it to be common for some people to call every charge a tax when in fact it might be a user fee. He noted that obviously when a large improvement is undertaken that combines grant funds with the City’s share of funding,

it is going to cost a lot of money. He noted these improvements to be necessary to provide the citizens with the services they need and to protect the citizens by making such improvements which do cost a lot of money and which increases user fees. Mr. Williams said whether or not Council passed this ordinance tonight, regardless of the improvement, it costs money. He said he felt it to be unfair because what he senses is that some people would claim that tonight was an expensive evening but in other cases it would not be criticized because it suits their needs. He acknowledged there to be several projects that need to be done and asked everyone to keep in mind that they are all going to cost a lot of money.

He also wanted to congratulate Councilman Albrecht and his wife on their recent 50th Wedding anniversary.

The Solicitor had nothing to report.

The meeting adjourned at 8:32 p.m., on a motion by Councilman Albrecht.\

City Clerk

Acting Council President