

**MINUTES – REGULAR SESSION**

**PORTSMOUTH CITY COUNCIL MEETING**

Monday, January 11, 2010

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on, Monday, January 11, 2009 at 6:00 p.m., in the Council Chambers of the Municipal Building.

President, David Malone called the meeting to order. The Pledge of Allegiance to the Flag followed a moment of silent prayer.

Noting the room to be filled to beyond the legal capacity of 49 citizens were asked to volunteer to listen from the hall and to be prepared to return to the room if they wished to speak to either items on or off the agenda. It was noted that if there were no volunteers, every third person will be asked to leave the room until the legal capacity of the room has been met. The room having been reduced to 49 people the meeting commenced. Noting speakers had been placed in the lobby, the President asked everyone to speak into their microphone so they can be heard by those standing in the lobby.

Roll Call showed the following members to be present:

Kevin Johnson	1 <sup>st</sup> Ward
David Malone	2 <sup>nd</sup> Ward
Nicholas Basham	3 <sup>rd</sup> Ward
Jerrold Albrecht	4 <sup>th</sup> Ward
John Haas	5 <sup>th</sup> Ward
Richard Noel	6 <sup>th</sup> Ward

Also present were Mayor Jane Murray; City Solicitor Michael L. Jones and City Auditor, M. Trent Williams.

Council dispensed with the reading of the Journal for the regular session of December 28, 2009, on a motion by Councilman Albrecht.

In response to memos from the Auditor, Councilman Albrecht moved to add to the agenda an ordinance authorizing an extension of a contract with Caudill and Associates CPAs to perform the financial and compliance audit of the City, in an amount not to exceed an annual amount of \$35,000.

The motion carried viva voce. The legislation was added to the agenda as Item “7g”.

Councilman Albrecht moved to add to the agenda an ordinance authorizing entering into a three-year contract with Schonhardt and Associates for technical accounting and management oversight assistance in the preparation of the 2009, 2010 and 2011 comprehensive and summary financial report.

The motion carried viva voce. The legislation was added to the agenda as item “7h”.

In response to memos from the Mayor, Councilman Johnson moved to add to the agenda an ordinance approving the 2010 Capital Improvement Budget and appropriating funds for payment of improvements to the Mayor’s Office in the amount of \$17,500 and the purchase of a new 4x4 regular cab snow removal vehicle in the amount of \$56,400.00

The motion carried viva voce. The legislation was added to the agenda as item “7i”.

Councilman Johnson moved to add to the agenda an amendment to the salary ordinance creating some new positions and providing salaries for same, which also included an increase in the Mayor’s salary.

The motion carried viva voce. The legislation was added to the agenda as Item “7j”.

Vice President Haas made a motion to recess into an executive session to discuss personnel issues including the recent dismissal of certain personnel, as well as the appointments of additional personnel and pending litigation against the City. The Mayor said she had clarification by the Solicitor under Section 33 of the Charter as to whether or not interference is in evidence with the Mayor’s appointment under this Section of the Charter. The Solicitor inquired of Mr. Haas as to specify exactly what he wishes to discuss in an executive session. Mr. Haas advised the Solicitor that he wants an executive session in order to “clear up” the dismissal of three employees and the hiring of new employees as it pertains to the ordinance that is now on the agenda to change the classifications in the Executive Department, to indicate the Mayor will be given a raise to \$65,000.00 a year and the abolition of others positions within the City. The Solicitor advised the Mayor that it would be his position, pursuant to the ORC, Council can go into executive session for certain types of issues, one of which would be personnel issues and another would be potential pending litigation. The Solicitor stated that based on what Mr. Haas is saying it would fall within those particular parameters and Council would at least have the authority to go into executive session for those purposes. The Mayor, for the record read Section 33 of the charter and declared that anyone who votes for the motion by Mr. Haas is in violation of that Section

of the charter and further declared that she will be filing charges of misdemeanor according to the provisions of the charter. Vice President Haas expressed appreciation of the Mayor's opinion and her opinion of the charter and he understands her position but he does not agree with it. Mr. Haas said that he believes that when the Mayor comes in and asks Council to approve legislation to do away with City positions and create new ones that involves raises for those individuals she seeks to appoint, this is something that is right for executive session. The Solicitor said he would concur with the Mayor with respect to Council not interfering with any (*not discernible*) decision the Mayor makes with the regards to (*not discernible*) with her department, however we are talking about personnel issues, potential litigation and he did not know what the purpose of the executive session would be other than what has been indicated by Mr. Haas. On that point, the Mayor stated it to be her understanding of the statute that Mr. Haas has to clarify his purpose, saying, "We cannot go into executive session for the purpose of a fishing expedition irrespective of who opined the notion". The Solicitor's concurrence with regards to a specific person was not discernible due to the Mayor expressing her thanks over his words.

Councilman Johnson acknowledged Council to have the Mayor's "suggested" ordinances on the table for discussion later and suggested that many of these issues will be covered during the discussion of the first reading of the two ordinances. Mr. Johnson said he did not see why, given the ordinances, Council could direct itself to the specifics of the ordinance, which would cover nearly all of Mr. Haas requests for an executive session. Mr. Haas noted there to be another issue that he would like to discuss in executive session is litigation. He further noted there to be litigation pending against the City at the present time by the Mayor and that is what he would like to discuss along with the proposed change in insurance coverage to another carrier on liability policies from the company that is defending the lawsuit that she filed. Mr. Haas felt this to also be something that the members of Council have a right to meet and discuss in executive session, noting this to be pending litigation. The Solicitor saying that as a matter of convenience for a lot of the individuals who are present this evening, he felt both Mr. Haas and the Mayor have brought up some good points, recommended proceeding with what is on the agenda and if there are still issues of concern at the end of the agenda that requires attention in an executive session then it should be entertained at that time. Noting that there is obviously a full house present this evening with expectations of seeing the Council meeting proceed, the Solicitor said he would hate to have them delayed any more than they already have and recommended the motion be put on hold until legislation has been considered. In response Vice President Haas asked that his motion be tabled at this time. The Mayor, with regard to the lawsuit that she has filed against the City, said she wanted to make it clear that her attorney has sought, with the City's attorney, a written statement from the Ohio Ethics Commission regarding that very active, noting that she and her attorney were proactive and realized that she could absolutely have no conflict of interest. She advised that response by the Ethics Commission will be forthcoming.

#### **STATEMENTS OR REMARKS FROM CITIZENS ON ITEMS ON THE AGENDA**

Cindy Hopkins – 2212 McKinley Avenue restated the objections she had voiced at the December 28<sup>th</sup> Council meeting. She provided scenarios on how the traffic might become congested. She called this neighborhood as a "prime residential area" and felt that the rezoning would open the door to low income housing. She felt that full information had not been forthcoming with regard to the objections to the proposed zoning change.

Carl Hilgarth – 2201 Woodlawn, said he was an engineer by profession and provided information regarding his credentials. He expressed his disappointment with the Planning Commissions decision, also citing traffic congestion. He also expressed concern about water runoff and the existence of other utilities and whether or not any consideration had been given to green space. Mr. Hilgarth felt a proper survey should have been provided to make sure sewer and water services are adequate and claimed the lot to fill with water after a rain.

Teresa Mollette – 1705 Franklin Blvd. objected to what she believed was eliminating public hearings on rezoning issues, however she was in favor of the medical complex, noting it would have less of a negative impact on the neighborhood than the former school. She cited the increase in property taxes that would be generated by the medical complex being located on this property and felt Council has the power to control what goes there.

Jim Kalb – 2234 Vinton Avenue objected to the cost of the renovation of the Mayor's office. He told of how he brought in ballasts to fix the lights and had plans on doing his own painting. He acknowledged there may have been some mold under the air conditioner, but noted there to be other areas of the building in worse condition. He also noted that when the office got cold he bought in a space heater. He noted the lack of heat is only in the Mayor's office and that the outer office, where the staff sits, the temperature was controlled by opening and closing the windows. Mr. Kalb felt the renovations were improperly done and advised that the City was cited by the State Auditors last year for creating expenditures without securing a purchase order (po) prior to creating a debt and he did not believe the Mayor to have secured a po prior to beginning the work and believes it has now become an obligation.

Sharon Bender – 1556 Highland Avenue said she was at the Planning Commission Meeting and she was not a plant, does not have a vested interest in the project, no one asked her to be there and she does not patronize the doctors who are making this proposal. She said she spoke in favor of the rezoning, acknowledging that the doctors have invested a substantial sum of money in the purchase of the property. Mrs. Bender did not feel there would be any more impact by traffic in that neighborhood than the school,

noting there would be no comparison. She also stated that the standing water that was referred to was also there when the school stood in that spot and has been there for many years with no problems that are any different from any other problems in the City. She said she felt people should be pleased that someone is interested in investing that much money in a building that will provide taxes and that the rezoning should be approved.

Harald Daub – 1221-22<sup>nd</sup> Street objected to the rezoning and suggested that Council should use caution in considering the change. He suggested that some things are done under the name of “Doctor” and felt this could happen in this instance. He requested Council to prohibit any such clinic from operating in that area. He acknowledged that good medical facilities are needed but speculated on what it might become. He claimed there to be no guidelines against that possibility in the ordinance.

With regard to the renovations being done in the Mayor’s office, Mr. Daub felt this was something that was long over due and it was just “sour grapes” from those people who spoke against it, calling them “sore losers”.

Linda Switzer – 319 Front Street claimed her family to have owned property on McKinley Avenue since 1960 and felt the school was “wonderful”. She wanted the Council to “think long and hard” on what they might be letting into that area.

Chris Neff – 2412 Mabert Road requested clarification on the repairs to the Mayor’s office. He requested clarification with regard to the memo submitted to Council by the Mayor. With regard to the repairs to the Mayor’s office he asked if the citizens were being asked to spend \$17,500 on one office in this building when the building’s future as not even been determined. He also inquired as to whether or not the new Mayor was aware of the City charter’s requirements that no one make more money than the Mayor and, if so, why did she proceed in hiring Mr. Peck and Mr. Mingus – if she was not aware of this requirement he wondered why she had not read the charter. If she did know about the stipulation, he wondered why she hired Mr. Peck. Mr. Neff said he could live with the truck purchase. Mr. Neff also asked when there was going to be a place found in the City for Council meetings where everybody can be accommodated. He continued by saying he felt there are a lot more important things that needs doing and that we need to have leaders who are going to teach our children and set examples that are better than the ones that are being set. Mr. Neff thanked members of Council, saying he would like to see them get an increase in pay.

Eileen Perry – 1410-16<sup>th</sup> Street acknowledging there to be opposition against the rezoning of the former McKinley school property, noted there was opposition several years ago to condos being constructed on that same property. She claimed this opposition came from the fact that there were those who felt that rezoning would allow a gas station or low income housing to be constructed in that area. Ms. Perry felt Council needs to think about “people’s house value” and also safety. She asked if the doctors' office is constructed on the property if that meant that there may be pain clinics or other things and will it entice more criminal acts in that neighborhood because of people who think they can go to that facility and get drugs. She said she hoped members of Council have not already made up their minds because they are supposed to be representing the citizens.

With regard to improvements being made to the Mayor’s office, Ms. Perry said everyone would like to see a new city building “but in time”. However in the mean time, she felt the repairs were needed because people have to work in that office so many hours and their health is in jeopardy when sitting and working in a place where there is “mold and things”. She asked Council to think about that too, saying “I know the City is in a deficit but I don’t think the Mayor, I don’t think she would be coming in and wanting all of these stuff (sic) just to spend money and you know – things are needed”. She felt the former Mayor was acknowledging the problem by bringing in his own heater while working from that office. She asked if Council could “fully concentrate” and if they would like working in a cold office “just like a child could be sitting in school and there’s no heat and sitting in the room cold”.

Jerry O’Bannion – 1222-24<sup>th</sup> Street began by thanking Council for all their hard work and extended to them his “deepest sympathy”, saying his prayers are with them, noting they have a “very tough job”. Mr. O’Bannion said he would like to speak about the proposed improvements to the Mayor’s office and to the proposed salary increase along with some of the changes that have taken place during the first week of this administration. He said given the fact the current administration’s key component in her campaign last year was centered around the City’s financial crisis, he was shocked to see that within the first of taking office actions have been taken that conceivably cost the City thousands of dollars in fines from the EPA. He also noted the proposed improvements to the Mayor’s office and the raises, saying “Most folks tend to wait until they have proven themselves on the job to ask for a raise”. As a tax payer, Mr. O’Bannion expressed his hope that his taxes will not waste his taxes on these things – not with the (*not discernible*) the City faces.

Maggie Miller – 3140 Forest Avenue spoke in favor of the proposed rezoning change for the former McKinley School property. Noting there to be a lot of things implied tonight that may or may not be true, she stated, with regard to a pain management clinic, that the people who are proposing the construction of this building have taken a substantial financial risk on this property for the benefit of Portsmouth. She pointed out that they could have built in Wheelersburg, New Boston or any where in Scioto County and paid all their taxes to them. She pointed out that the occupants of the medical complex would be a board certified urologist, who has been here approximately seven years; a board certified gastroenterologist who has been here approximately eighteen years; a board certified orthopedic surgeon who has been practicing here for approximately ten years;

a board certified internist who is a native of Scioto County and who has been practicing for about thirty years. She said these are not people who intend to open a pain management center. She said a pain management center is not on their agenda, saying, "Frankly it is not in their agenda to get mad and open low income housing either". Mrs. Miller pointed out that what these individuals want to do is build a quality office where their patients can come to get quality medical treatment in a quality place. She also noted it would be a place where they can enjoy practicing medicine. With regard to condos three or four years ago, she said she opposed the change in zoning at that time because the school system requested the change when they did not even have a buyer of the property and it would have opened up problems without knowing what was going to be done. She pointed out that we now have four doctors who have a plan and have spent a significant amount of money on the land, lawyers and architect to do something specifically good for this community.

## LEGISLATION

The Clerk gave a **second reading** to an ordinance authorizing and directing the Auditor of the City of Portsmouth, Ohio, to distribute all City Income Taxes for the year 2010, collected in accordance with Ordinance No. 100 of 1970; No. 110 of 1976 and No. 84 of 1987 into the General Fund and Capital Improvements Fund as hereinafter set forth.

Councilman Albrecht moved this constitute a second reading.

The Auditor, with respect to the motion, the Auditor advised that this Item and Item "c" are the pieces of legislation that are required each year to begin the year. He noted they are only held over from the previous year to make sure they are passed in the year they will become effective. The Auditor advised that there are no changes tax wise or other wise but are simply housekeeping routine ordinances that are required for the City to distribute taxes in accordance with the charter and Item "c" is to request advance payment of all taxes that are outstanding to the City's account from the County Auditor's Office. Mr. Williams requested both items be passed tonight due to the routine nature of both items.

Councilman Albrecht withdrew his motion for a second reading and made a motion to suspend the rule requiring an ordinance be read on three separate dates.

The roll was called. **VOTE: ayes 6 – nays 0 The rule was suspended.**

Councilman Albrecht made a motion to pass the ordinance.

There were no questions or comments. The roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #01-10**

The Clerk gave a **second reading**, in its entirety, to an ordinance to make appropriations necessary for the current expenses of the City of Portsmouth, Ohio for the months of January 2010 and February 2010 as provided for in Section 50 of the Charter of the City of Portsmouth, Ohio.

Councilman Albrecht moved this constitute a second reading.

The Auditor advised that, for different reasons, this ordinance also needs to be passed this evening. Mr. Williams noted a temporary ordinance is required to be in place prior to the 19<sup>th</sup> of this month in order for the City to make payroll for its employees. Mr. Williams asked Mr. Albrecht to withdraw his motion and asked Council to suspend the rules and pass this ordinance.

Councilman Albrecht withdrew his motion and made a motion to suspend the rule requiring an ordinance be read on three separate dates.

The roll was called. **VOTE: ayes 6 – nays 0 The rule was suspended.**

Councilman Albrecht made a motion to pass the ordinance.

The Auditor, for clarification, said this ordinance will simply make appropriations necessary for the necessary expenses during the months of January and February, which are needed for the operations of the City through the end of February while allowing the Mayor to prepare the budget that will take its place thus becoming effective for twelve months that does not make changes to salaries or anything else that may be effected by the budget that will take its place. He noted salaries under contract would take place immediately due to the contract taking precedence but everything else will remain the same as it appears in the present salary ordinance and any necessary changes, due to the new budget would be retroactive back to the first of the year, if that is Council's desire at the time of the passage of the permanent ordinance.

There being no further comments the roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #02-10**

The Clerk gave **second reading** to a resolution requesting the advance payment of all taxes now standing to the account of the city of Portsmouth, Ohio, from the Treasurer of Scioto County, Ohio and any and all other monies due the City of Portsmouth, Ohio, included in the certificate of estimated resources as

issued and approved by County Budget Commission and to be credited to the respective funds by the warrants received from the Auditor of Scioto County, Ohio.

Councilman Albrecht 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 6 – nays 0 The rule was suspended.**

Councilman Albrecht made a motion to adopt the resolution.

There were no questions or comments. The roll was called. **VOTE: ayes 6 – nays 0 The resolution was adopted. RES. 01-10**

The Clerk gave a **first reading** to an ordinance authorizing a requirement that all contractors working within the City register with the Engineering Department and that during times of a natural disaster the City will request the assistance of the Attorney General's Office, Contractor Registration Program.

Councilman Albrecht moved this constitute a first reading.

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

The Clerk gave a **first reading** to an ordinance amending chapter 1131 of the Codified Ordinances of the City of Portsmouth, Ohio – Administration, Enforcement and Penalty by repealing Section 1131.07 (d) (1) and (2) – Amendments – Action by Council.

Councilman Albrecht moved this constitute a first reading.

Councilman Johnson stated that this ordinance “was introduced as indicating there were duplications between the issues”. He said “in reading Sections 1 and 2, Sections a and b refer to, referral to the Planning Commission requiring two weeks of public notice and nowhere on their referral or public hearing under 1131107 does it indicate text and materials being on file for public”. He claimed that by eliminating “Action by Council” would eliminate the thirty-day public hearing notice as well as eliminating the requirement for text and materials to be on file for the public. He expressed concern that this change would result in a “super fast process” when it pertains to zoning. He felt there to always be a interest in zoning and the impact that lasts for a long time. He felt Council needs to know what those long-term changes and consequences might be. He noted this change would eliminate the requirement of action by Council, stating that he is really concerned that, if passed, future Council's would take advantage of this and suspend the three-reading rule. He also felt there was the possibility that text and materials would not be available to the public since it isn't stated as such thus the public would have to request the information under the Freedom of Information Act and based on their time line the materials could become available after the decision is made and therefore be mute. Councilman Johnson said he was still trying to find out why this legislation was introduced because he does not see duplication in these four sections and specifically 19. He said he could not vote for the change as he thinks it is important that we take as much time as possible to review them.

In response to Councilman Basham asking for his perspective, Councilman Haas stated that the reason to amend the sections that were identified was to eliminate the thirty-day notice and yet another requirement to advertise, which incurs another additional expense and another thirty days of time before another public hearing can be held. He noted the Planning Commission to have already advertised and held a public hearing. He said this is the reason for the requested change to the ordinance. The President felt Councilman Johnson has a valid point, noting that Council may not receive all the information in the beginning and there may be some important issues come up that need to be addressed. Councilman Haas agreed with the President and with Councilman Johnson's statement last meeting regarding three readings and suspending the rules but felt this to be an example of a situation when Council should not waive the three readings and therefore allow citizens the opportunity to explain their position with regard to a zoning change. He said his purpose was to save duplication of effort and expense when trying to make zoning changes.

The Mayor stated that “in the normal planning and zoning (*not discernible*) of local government the opportunity to afford the public as much input has always been the norm”. She stated that all this does is go from the Planning Commission to the Council's prerogative of having a public hearing. With regard to the requested zoning change, the Mayor said she actually went to the Engineering Department to see the plan, the day before the meeting, and there was nothing “for the public nor for me or anyone to see what the plans were”. The Mayor felt that the “engineering staff” or “planning staff” should, due to the ordinances, and acknowledging that she has not yet read them all, typically review a zone change request. She further stated, “Anyone who buys a piece of property with the notion that they are requesting a zone change, is a developer, whether they are doctors or lawyers or carpenters or (*not discernible*) I guess, anyway whether they are doctors or lawyers, no matter they are developers and that is the risk you run as a developer you may or may not get the zoning change and that's the nature of it”. However, she felt that there has to be a process, which she says involves “staff” reviewing the plans to see if they comply with the land use plan city, if they comply with the code requirements of the city. She stated that one thing that should be required before it goes to the Planning Commission is a “transportation impact – traffic impact study”. She noted these to be done routinely so that when the Planning Commission meets they have all the documentation from the “staff” and claimed none of

that happened with regard to this rezoning request and therefore the public had nothing to respond to at the public hearing. She reiterated her stance that the Planning Commission was not provided with the necessary data from the City as to how this might or might not (*not discernible*). She claimed that the public is now asking for the opportunity to be heard and saying, “I differ in that this is a public meeting about a multitude of issues but a public hearing about a zone change that is restrictive to that subject and that topic so that all information presented to you from both sides”. Ms Murray reiterated her concern about the process. She also claimed that if this amendment passes Council would not have the option of having a public hearing.

Councilman Haas asked the Mayor if what she was talking about was her vision of what the ordinance should say or if it was what she interpreted the ordinance to say. He said he did not see anything if the existing ordinance about a traffic study for the Planning Committee or specific to City Council. In response the Mayor stated these to be “normal standards”, which she said is part of the operating procedure of the “Planning Staff” and that her Commissioner, Mr. Peck, is fully aware of those and so whenever any zoning change request he would make sure that all the proper information and data are supplied. She further stated “It is typical, if there is a zone change request a traffic impact analysis is always performed and the infrastructure impact analysis – what the code issue – what about the storm water regulations, how does that development interrupt that?”. She claimed these to be the kind of questions that “have to come out” at the proper time. She further stated that when the staff has no plans the day before the zone change hearing the public had no information. She called it an information process and felt that if it takes 30, 60 or 120 days “that is the nature of government, that is the nature of the processes”. Councilman Haas noted that his question for the Mayor is whether or not what she is saying is a procedure that she is going to put in place in the administration of her office or if that is something that is currently in the ordinance..... Mr. Haas was interrupted by the Mayor who said she did not know because she has not read all the ordinances yet nor has she read all the procedures with regard to the City of Portsmouth, but continued to claim that her description of the procedure is what is a “normal planning and zoning process of good functioning government” and saying, “that is where I want to see us get to”. The Mayor suggested to Mr. Haas that this be reviewed as an overall approach and felt that the City needs to look at its “zoning overlay” saying, there are people on Orizaba, Edgewood and Elmwood who would have no idea that there is an overlay on their property whereby doctors could purchase and tear down property and build a doctor’s office now. She claimed that some of this goes back to a different era and gave an example of earlier TV shows where doctor’s had offices in their homes. She felt all the planning and zoning regulations need to be reviewed and updated.

Councilman Johnson expressed his opinion that the conversation is getting a little off track. He said he does not disagree with the Mayor as far as what should be reviewed but noted that to not be what is being discussed with regard to the proposed amendment and the motion that is on the floor. He again expressed his concern that the process might be shortened. Councilman Noel concurred with Councilman Johnson. Councilman Haas advised that the amendment that he is proposing will eliminate the need for Council to duplicate action already being taken by the Planning Commission. He also pointed out that the ordinance as written states that the Council “shall” have a public hearing and provide a 30-day notice and that it is not Council’s prerogative. However, he noted that if this ordinance is amended and Council decides there is an issue and they want to have a public hearing they would be welcome to do so. He further noted there were people, some in favor and some against the rezoning, who spoke this evening and pointed out that no one is stopping anyone from coming to these meetings and voicing their opinion and further pointed out the fact that this is a first reading and there will be two more chances for the public to address the issue. He said the opportunity is there for people to present arguments for and against the issue. Mr. Haas said the amendment is a cost saving, time saving measure, which he felt was something that was left over from when the City had a City Manager form of government. He again noted the ordinance to be redundant. Councilman Johnson felt this ordinance was passed in the year 2000 and is not more than a few years old and felt that something must of happened that caused there to be a need to take care of public input.

There being no further questions or comments the roll was called on the motion for a first reading.  
**VOTE: ayes 4 (Malone; Basham; Albrecht; Haas) – nays 2 (Noel; Johnson) A first reading was declared.**

The Clerk gave a **first reading** to an ordinance to amend the Zoning Map of the City of Portsmouth, Ohio, by rezoning all of Parcel Numbers 33-2640.000 and 33-2921.000 generally known as the former McKinley School, Ohio from its current zoning of Residence “A” District to Residence “B” District. This property is more particularly described in the attached Exhibit A.

Councilman Albrecht moved this constitute a first reading.

Councilman Johnson noted Council receipt of a Council Letter on December 15<sup>th</sup> that simply conveyed the Planning Commission’s recommendation that the rezoning be authorized. He further noted that since the receipt of the Council Letter, Council has received a legal description of the property as well as a map, however, he reported that to date no copy of the minutes of the meeting have been received or any indication of what the consequences would be in making this change. Mr. Johnson brought to Council’s attention Section 116 of the City’s charter and read same. He noted the recommendation to have been received but questioned not having received a report. He felt Council could not make a logical cognizant decision without a report as to whether the rezoning is in the benefit of the City or the neighborhood.

In response to the President asking if it would be in order, at this particular time, to schedule a public hearing on this issue, noting that the hearing would occur by the time this ordinance receives the third reading,

the Solicitor advised that the Council obviously has the authority to call for a public hearing. The President acknowledged that Council often receives these types of recommendations without there being a lot of information provided. Acknowledging that he has not yet seen the plans, the President suggested it might be a good idea to schedule a public hearing on this particular ordinance. Councilman Haas noted that a public hearing may call for a special meeting of Council and further noted that when this item appeared on the conference meeting three weeks ago, the architect for the project was present with all the drawings and spent time talking with citizens following that meeting.. He reported the information to have been made available to those who had questions at that particular time. The Solicitor, acknowledging that he is a member of the Planning Commission, reported there to be citizens speaking on both sides of the issue at the public hearing held by the Commission. He also noted the citizens to have had two opportunities to address the issue because a question had come up during the meeting and everyone was afforded an opportunity to respond to that particular question. The Solicitor expressed his frustration, saying his office is open and he is more than willing to answer questions from anybody, the Mayor, the Council or the Auditor. He asked that if anyone has any issue of concern to let him know and he will be happy to respond to them. He concurred with Councilman Haas with regard to the fact that Council met on this at the conference meeting and that the architect, as well as the attorney representing the doctors were present and were ready, willing and able to answer any questions. He said he did not believe this to be a matter of anyone withholding information from the Council or the public. He reiterated the fact that the information is “out there” and his willingness to share that information as are the gentlemen who are present this evening. He also reiterated his frustration, saying it is difficult to respond when there is no advance notice of these issues.

Councilman Albrecht, noting this to be the first reading, felt that there is time before the next meeting for Council to receive a report from the Planning Commission.

Councilman Johnson expressed his frustration to come from the fact that, as members of Council, they should not always have to be searching for the information. He said he feels comfortable about meeting with the Solicitor but felt that to not be the issue. He felt the issue to be what was presented to Council and felt it to not be enough information for Council to make a logical choice even for a first reading. Mr. Johnson stated his preference would be to table the ordinance until Council receives the report and heard from the architects as to the design of the building.

In response to the President inquiring of Mr. Johnson as to whether or not he was making such a motion, Councilman Johnson moved to table the ordinance.

The roll was called. **VOTE: ayes 2 (Noel; Johnson) – nays 4 (Albrecht; Haas; Malone; Basham)**  
**The motion to table failed.**

The President clarified his “nay” vote by saying he felt there to be enough time before considering passage of the ordinance to even have a public hearing, if so desired.

Councilman Basham,, noting that as an educator he felt homework to be very important, said he spoke with the architects after the last meeting and scheduled an appointment. Noting this project to be in his ward, he said he met with them on his own time and looked at the footprint. He said he felt the information was there for anyone to see, noting it is not a secret.

There being no further questions or comments the roll was called on the motion for a first reading.  
**VOTE: ayes 4 (Basham; Albrecht; Haas; Malone) – nays 2 (Johnson, Noel) The motion carried. A first reading was declared.**

The Clerk gave a **first reading** to an ordinance authorizing the Auditor of the City of Portsmouth, Ohio to extend the contract with Caudill & Associates, CPAs to perform the financial and compliance audit of the City of Portsmouth for a one-year period of January 1, 2009 through December 31, 2009, in an amount not to exceed \$35,000 annually, to be paid from Audits and Examinations accounts appropriated each year within General and Enterprise Funds as outlined in the annual Operating Budgets.

Prior to a motion being made the Auditor advised that he brought this and the next ordinance back to Council, noting both to have already received three readings in 2009 and believed they could have possibly been passed if there had been full attendance from Council at its last meeting. He requested Council to suspend the rule and pass these ordinance so both contracts can commence as soon as possible.

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 Haas made a motion to pass the ordinance.

In response to an inquiry from Councilman Haas, the Auditor acknowledged this to be one of those ordinances that was previously presented to Council and that this one authorizes the contract with Caudill & Associates for the 2009 Audit. The Auditor also confirmed that in the in the past couple of weeks he has been able to renegotiate both contracts and, due to the City’s present financial constraints, was able to get a \$5,000.00 reduction in both contracts.

There being no further questions or comments the roll was called. **VOTE: ayes 6 – nays – 0 The ordinance was passed. ORD. #03-10**

The Clerk gave a **first reading** to an ordinance authorizing the Auditor of the City of Portsmouth, Ohio to enter into a three (3) year contract with Schonhardt & Associates for technical accounting and management oversight assistance in preparation of the 2009, 2010 and 2011 Comprehensive and Summary Annual Finance Reports.

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 Haas, the Auditor acknowledged this contract to have been reduced from last year's original cost of \$25,000.00 to an amount of \$20,000.00 - \$18,000 for the CAFR and \$1,500 for the SAFR – and noted this to be a 20% reduction in cost.

There being no further questions or comments the roll was called. **VOTE ayes 6 – nays 0 The ordinance was passed. ORD. #04-10**

The Clerk gave a **first reading** to an ordinance approving the preliminary 2010 Income Tax Capital Budget and appropriating funds for same from the Capital Improvement Fund No. 301 (Executive Division), for items, therefore,

Prior to a motion the President questioned two different items being requested and turned to the Mayor for clarification. The Mayor stated that the last report showed “a capital fund balance, from 2009, of \$1,125,000.00 and so these are capital items so it should come out of the CIP budget”. She said when she conferred with the Auditor he indicated they should be in the same ordinance. For clarification, the Mayor stated, “I had requested that we be able to get into the office early so we could start getting organized and we were not allowed that courtesy so when we came to the office Monday, we had taken a preliminary view just to see how we, what we wanted to do to clean the place up”. She continued, saying “The indication here is that we also had our two offices, the whole office area in both, were also smoke damaged in that people obviously smoked cigarettes in the offices”. She claimed there to be “smoke damage” in the ceiling tiles, furniture and “all the soft goods”. She also reported the lack of heat in the Mayor's Office and claimed that when the heat source was torn out there was damage to the wall, saying “that's where the water was coming in from the outside and also cold air”. The Mayor further stated there to have been “cheap” paneling installed in the early 50's and reported that to have been removed. She advised that the dropped ceiling is being removed and the office is being “taken back to its original state”. The Mayor stated, “I want you to know that when we first looked at this, I said ‘we do not want to throw good money after bad, whatever we do has to be something structurally that will make sense’.” She further stated that when she and Mr. Peck began “assessing” with people in the building with regard to problems of this building in terms of maintenance, one of the things she discovered is that there is no building maintenance fund in the budget. She noted that such a fund has to be established. She also advised that part of what she will be presenting as a capital budget is replacement and repairs to the roof. She said it is quite right that changes cannot be made to the plaster and paint and not have those problems to reoccur if, to begin with, the roof is not properly replaced. She claimed that to be where all the problems started and felt that no matter what is done long-term we still have to have a new roof and address the “mold, and the fracture. She advised this would all be a part of her budget. She claimed this particular request to be in line with those other things, pointing out that this request also includes heat and air conditioning in one unit like is done in hotels. She acknowledged the cost of the things she just listed to be \$14,900.00 and with new carpet the total cost would be \$17,500.00. She stated that this total will come from the CIP along with the purchase of a new truck for snow removal and spreading salt. She stated the total to be, from the existing CIP #301.

Councilman Basham, referring to Section II of the ordinance which states “The Mayor is hereby authorized to enter into contracts” and noting the reference to advertising, stated that he noticed the work to have already been started and inquired if contracts have already been signed or if any advertising has already been done. In response, the Mayor stated, “There are situations where the Mayor has authority to go ahead and enter into contracts in the beginning of (*not discernible*) for some there are requirements that I have to bring back for authorization.” She continued, saying “The decision that I made was that we needed to get in our office. We couldn't because there was smoke filled against the wall” (sic). She claimed smoking to have occurred in the offices and that she couldn't breathe. She further stated, (I needed the key to my office we needed the office cleaned up for the public”. She said with advise from the Auditor the first time she could communicate with Council was in the packet that was provided to Council this weekend, claiming it to be the first time she could ask for any action. Councilman Basham advised the Mayor that he would like to see more of a comprehensive plan for the City Building. He agreed with the Mayor that her office was not acceptable, however, he reported having taken a tour of the Police Department on Friday and he felt that entire floor is not acceptable. Mr. Basham stated that instead of throwing money here and there he would like to see more of a comprehensive plan before we start fixing corners and bits and pieces. The Mayor said that is exactly what she indicated when she said she will be bringing back to Council, for their review when they are discussing the on-going budgets for 2010. Councilman Johnson agreed with Mr. Basham, saying the problems we faced in the

past is that there is no budget for maintenance. He said it is kind of hard to develop a plan when you don't know the cost and there is nothing set aside in the CIP for those costs. He stated that throughout his career he has been quite use to the Chief Executive Officer to redo their offices and he didn't care what the decision was. He stated it to have been unfortunate that the Mayor had to take this route because there was not a maintenance fund. He expressed his hope that the next budget will provide maintenance funds for this building regardless of what happens to the building five years from now. He felt we should, at least, maintain what we have through the budget process. Councilman Albrecht said he felt \$2,600.00 for carpet is a little excessive. The Mayor advised it to be a commercial brand carpet therefore it costs a lot more than carpet for our homes. She explained the difference between commercial carpet and other carpet. She also explained that she is carpeting the whole area not just the Mayor's office and that the cost includes installation. The President said he had no problem with the particular items but he felt there were protocols and that is why we have ordinances. He acknowledged there to be no funds set aside for maintenance to address these issues, however, all improvements had to be approved by Council before any action is taken. The President said Council does not want to set a precedence by allowing these things to happen and then Council approves them after the fact. The President concurred, saying that was his position and he felt Council could get in trouble, if they allowed that to happen. Councilman Haas echoed both the thoughts of Mr. Basham and the President and said he did not know why improvements to the Mayor's office would be considered before the problems that exist in the Police Department, Court rooms and the Clerk's Office. He noted the facade is about to fall away from the back of the building and he felt this would probably justify more attention than the Mayor's Office. He felt that after a week in office the priorities should be more focused on remedying other problems and less about pay raises and fixing up the Mayor's Office. The Mayor stated the "fact of the matter" is not about "grand standing" but was about basic health and safety issues, saying "I could not operate in my office, I could not do the City's business, I'm empowered by the citizens of this community to deal with the day to day administrative issues with regard to this government and all departments". She continued by reiterating previous remarks she and Councilman Johnson had made with regard to there being no maintenance funds allocated in the budget. She noted routine maintenance along with major maintenance has not been neglected. She said, "We're use to budgets where these things are planned therefore you can do planning so that you can indicate. (sic) She said that this year hundreds of thousands of dollars are going to have to be spent or whatever for a new roof then we have to address each individual project. She felt it to be without merit and also without precedence that she should come into an office "that has been obviously violation of the state law whereby as Mayor we are suppose to uphold the state laws - no smoking is allowed and I myself saw that going on in the office". She continued, saying, "Therefore, there is no way for me to do my work day to day in an environment where I absolutely have my health threatened and my employee and the public who come into my office". She said, "I don't think Mr. Haas would want me to work in an office where it didn't have any heat especially when it is 10 degrees outside". She claimed the whole thing to be (*not discernible*) at best, saying "What we are talking about is moving the government forward. I have to get in my office in order to move forward". In response, Councilman Haas stated that the police officers, who are responsible for the safety of the citizens in this town, deal with a conference room that has black mold on the wall and they are using that every day. He said he did not know why, at this time, spend money on this building in the Mayor's Office when we have problems that may be even worse in the basement where the police officers meet every day, noting that there is more than one individual who needs better working conditions. Mr. Haas continued, describing the restrooms in the police department as being atrocious and he did not understand the priorities and I would ask.....At this point Mr. Haas was interrupted by the Mayor without addressing the chair. The President reminded the Mayor to address the chair. Given permission, the Mayor claimed these problems with this building predated her taking office by numerous years and stated, "In my opinion the previous administration and the Council had a responsibility to address those issues yearly in the budget". She stated there was nothing she could do about the fact that it hasn't been addressed in past time and that all she could do is to tell Council how she intends to address it going forward, saying "and forward we will have a proposed budget that includes building maintenance". The Mayor said she does not yet know how many of the buildings, from which the City operates, have or do not have building maintenance funds, but noted that from what she has seen, it appears there is little to no funds for building maintenance. The Mayor stated, "All I can do is give you my best judgment about how we move forward to rectify the situation in which we find ourselves whether we're in the Auditor's Office or the Police Department or the Court Rooms".

Councilman Noel said he has been on Council for two years but has attended meetings for many years. He said, "I think this building has been deliberately neglected". He felt an issue is being made about someone who is trying to do something to "change this routine that has been going on here for many years". He said he was not putting the blame on the last administration particularly but felt they contributed to it. Mr. Noel felt it to be Council's duty, "to, at least, give the Mayor the advantage of having a decent office to work in or rent a place for her to go where it is fit to bring people in to represent our City". With regard to the neglect of the other offices, Mr. Noel said, "We should make this an emergency exception to the rule" saying, "this is chicken feed compared to what this building needs" and reiterated his accusation that the building has deliberately neglected by past administrations. He felt this to be one way to start correction of that.

Councilman Johnson described the Mayor's Office as a "public place" where contracts are negotiated and visitors are met, noting that to be the first place they come. He said, "I am glad that the Mayor has taken it upon herself to clean it up" saying it is not a reflection on the previous Mayor or the Mayor prior to him. He said he thought every Mayor should make the office their own. He acknowledged the unfortunate fact that there was not a maintenance budget but said he has seen Council bend over backwards in the past to call this type of situation an emergency or giving it latitude, and claiming "this Council has done that many times". He said he was almost getting the feeling that past precedence is being ignored for "quite honestly for \$17,000.00". Mr. Johnson said he thought there were other reasons and he did not even want to go there at this

point, noting that the Mayor has indicated to Council that part of her solution is for the long-term budget to handle maintenance for this building, saying “that hasn’t been done forever”. He said, “this is just one part of it the entry way, the very first office must (*not discernible*) and I think that’s appropriate.

The Solicitor voiced his main concern as being the procedure, saying he does not dispute that the Mayor’s Office and other offices in the City are in a state of much needed repair. The Solicitor reiterated his concern that we are not getting the cart before the horse. Councilman Albrecht, with regard to a new truck, said he did not think this is something that is needed and he will vote against it for that reason.

It being acknowledged that there is no motion on the floor, Councilman Haas made a motion to table the ordinance. The roll was called. **VOTE: ayes 1 (Haas) – nays 5 (Basham; Albrecht; Noel; Johnson; Malone) The motion to table failed.**

Councilman Johnson made a motion to separate the two issues.

The President agreed with Mr. Johnson’s motion . The Auditor said he did not know what the intent is in separating the two items, noting that Council has the ability to amend the ordinance, if it their desire to consider one or the other of the requests. He noted that typically these type of requests are contained in one ordinance and pointing out that all the other CIP requests will not be presented to Council as separate ordinances. In response to the President saying he does not remember seeing two separate issues on one ordinance, the Auditor noted that they are both CIP requests and are not separate issues. The Solicitor stated that in terms of the format (*the remaining response was not discernible*)

Councilman Johnson withdrew his motion and made a motion that this constitutes a first reading.

The Auditor requested an opinion from the Solicitor with regard to any further actions being taken by any contractors in the Mayor’s Office. The Auditor, pointing out the fact that there is no guarantee that this will be passed, he would hate for someone to do any further work and then Council ultimately not back that work up with funding. Councilman Haas asked if the Mayor was going to pursue this by including it with her other plans to do renovations or other projects within the building to correct the other problems that have already been discussed. Mr. Haas stated this to have been the purpose behind his motion to table the ordinance. He was concerned about spending money on one office while allowing other offices to suffer with mold and other issues. In response to the Auditor’s earlier question, the Solicitor recommended that this ordinance not be passed tonight and that no further work be done until it has been approved. Councilman Johnson agreed with Mr. Haas, saying “we, as Council, need to review the Mayor’s proposed budget when it come in to assure, not only are there funds within the CIP for maintenance of this building but there is a schedule for how to utilize these maintenance funds office by office”. Councilman Noel agreed with Mr. Johnson and felt the present ordinance should be passed as an emergency measure so consideration can begin on a plan.

There being no further questions or comments the roll was called on the motion for a first reading. **VOTE: ayes 2 (Noel; Johnson) – nays 4 (Albrecht; Haas; Malone; Basham) The motion failed. The President noted that on the advice of the Solicitor no further work is to be done).**

The Mayor asked to be allowed to have this item returned at a conference meeting following this meeting. The President, noted that would be good, however, there is no conference agenda. In response to the Clerk reporting that no conference agenda was submitted, the Mayor stated, “I just submitted one”. The Mayor noting there to be no notice requirement on her conference agenda, again stated that she was submitting one at this time and further noted it to be just a work session. Upon being asked, the Solicitor concurred that it is a work session. The Mayor also felt that since “everyone is fully aware” including the news media and that she has invited everyone to see the work in the office – she stopped at this point and announced that her office has serious work to do and claimed this is being made a political issue, which she described as “a slap in the face”. She continued saying “Irrespective of people who may have lost their job, my job as Mayor, according to the charter, and no matter who reads it, but it is written so that lay people, even I can read it, even the people in the audience can read it” and continued by reading an excerpt from Section 30 of the charter designating the Mayor as the chief executive and administrative officer of the City. She stated, “irrespective of who won and who lost this comes down to the people’s business and I’m telling the people that I do not conduct their business until I have an office with heat in it, with the smoke removed from it, with the mold taken out of it and without paint and carpet on the floor”. She claimed to have furniture donated and further claimed that in the 2010 proposed budget, by the former Mayor, he had more than \$10,000.00 from which I could choose to purchase furnishings for the office – desk, chairs, etc”. She stated it to have been her intent to provide proper for the public and for her office with those funds, however, she said she has spoken with a local furniture to see if he would be willing to work with her so the furniture can be purchased at cost or cost plus 10% and shipping costs. She said “He’s agreed. He’s agreed to help the public”. She continued, saying, “Irrespective of politics the public has a right to have a property functioning office for its Mayor – our office is not functioning”. She claimed the copier and the fax to be broken. She also claimed that hard drives in the computers where “swiped out” and “wiped clean”. She again reiterated the fact that she has to have a functioning office, saying, “therefore, I’m asking Council, as a matter of courtesy to me and to the public to put this item on for discussion”. Noting that Councilman had a problem with the truck, the Mayor stated that could be discussed further. She said she felt there to be an emergency situation then she learned late Friday that the truck cannot be delivered as soon as she thought. She said that can be moved back and put on the regular CIP budget. She said she would like to discuss these options with Council in a conference session, that’s all.

The President acknowledged the request and again advised the Mayor that she did not submit a conference agenda, the Mayor interrupted the President to admit that to be true but when she continued to speak the President reminded her that she is interrupting and failed to address the chair. At this point the Mayor said she was directing her answer to him. The President advised the Mayor that he was not asking a question but was, in fact, making a statement. He again noted the fact that there was no conference agenda and from his perspective there is not a conference meeting. The President reminded the Mayor of the requirements in the charter with regard to Council attending legislative meetings and that there is no requirement that they attend conference meetings. He advised the Mayor that each member of Council, if they wished, could get up and leave after the legislative session and repeated the fact that none of them are required to stay for a conference meeting and seeing that there are no items on a conference agenda, there is not conference meeting.

The Mayor said she would “gather” this discussion to be precedence setting, saying “especially given what Mr. Johnson has indicated, I’ve witnessed it the last year and a half that I’ve been attending Council meetings”. She continued, saying “again, I have to have the ability to function. My office has a stack of documents coming in daily that have to be attended to. If we’re not able to operate in that office the business of government cannot be accomplished”. The Mayor said, “The charter clearly states that **that** prerogative lies with the Mayor and **her** operations. It does not apply with the Council”. The Mayor said that she was merely asking the courtesy of a Council addressing this as an item and acknowledged that she did not submit a conference agenda, saying, “that is my agenda – I did not submit one, Council members didn’t say they had anything they wanted to list on the conference”. She continued by again asking the Council, “in this unprecedented moment” where they find themselves, “to do the right thing”. She said, “If not for me, certainly for the public”. In response, the President said, “If doing the right thing, even if we did stay for a conference session, there is no legislation, we couldn’t do anything with it tonight because this ordinance already failed”. The Mayor stated, “But Sir, I have the ability to bring it onto a conference agenda to have it discussed to be put back on your agenda for the next meeting, that is what I would like to do”. Councilman Noel asked if he had the authority to bring this up for a conference meeting. The President advised him that he did not because it is not Council’s agenda but rather the Mayor’s agenda. The President, with all due respect, said he thinks everyone knows and understands the authority of the Mayor’s position but as she also knows, he is not trying to supersede her authority but he is just doing his responsibility as a member of Council. Mr. Malone pointed out the fact that he is beginning his seventh year as a member of Council and does not remember anything ever being done before Council approves it. The Solicitor advised that the Mayor, at her discretion, has the authority to bring the issue back to Council at the next conference meeting regardless of whether or not it appeared on a conference agenda this time. He further stated that this is quickly being made an issue and we are losing track of what really is the central issue. Acknowledging that the Mayor obviously has a heat problem, the Solicitor advised that there are various portable heaters in the building and offered her one from his office. He agreed that the office should be warm and offered a solution to that problem. He said he would also be happy to contribute use of his office copier and fax machine. He also offered her the use of his office for any meetings she needs to have but acknowledged his office to not be the greatest one either. The Solicitor expressed his concern as being if the situation is established where funds are expended before Council authorization, noting that is what this is about and Council basically has control of the City’s money and authorization has to come from Council before it can be spent. The Solicitor said he could not speak to what has happened in years past, but he could tell her that he was very frustrated when he took office because he did not have a desk for the first week. He said he also did not have a computer, noting he didn’t have a lot of things he thought he needed to run his office properly and unfortunately he had to wait until he got approval to purchase those items. Mr. Jones advised that it is sometimes unfortunate sometimes what you have to encounter when you take over an office. He said this is not to excuse any deplorable conditions but he does not want a situation where we’re trying to explain to a judge or an auditor, at some point, why an expenditure was made without Council approval. The Auditor advised the Mayor that should she take the Solicitor up on his offer of a space heater, she should be careful because there is very little electrical capacity in this building. He stated that to be a reason why there has been an effort to get out of this building. He said everything in the office cannot be run at one time, saying if a heater is on the copier can’t be used. The Auditor asked about the disposition of the ordinance that was just read and was advised that it had been defeated.

The President reiterated the Solicitor’s advise that the Mayor can bring the issue up again at the next meeting but as for this evening, there is no conference agenda. In response the Mayor stated, “Mr. President, I would put you on notice now and the rest of the members of Council that it will be back on the agenda and since it has been thoroughly discussed, at the next time I would ask that I am going to request an emergency reading because we now know what all the issues are, I think we kind of beat them to death”. She said she would separate the items as requested by Councilman Albrecht and the snow removal truck will be included in this year’s CIP budget.

The Clerk gave a **first reading** to an ordinance to amend the Salary Ordinance as amended by Ordinance No. 63 of 2009, to reflect new appointments by new administration and to repeal Ordinance No. 63 of 2009.

Prior to a motion being made the Mayor, after advising the President of the proper way to address her, noted that she had explained in a memo to Council that this amendment establishes three new positions in the Mayor’s Office. She identified those positions as the Commissioner of Engineering and Public Service with a salary of \$65,000.00; an Assistant Commissioner of Engineering and Public Service with a salary of \$50,000.00 and a Chief of Staff at a salary of \$49,800.00. The Mayor noted that she also provided to Council the BIO of Mr. Jeffory Peck the individual that she has hired in that capacity. She claimed Mr. Peck to be a

“Registered Professional Engineer, Civil Engineer in the State of Kentucky and stated that he has applied for his license in Ohio. She stated it to be “just a matter of time before that occurs”. She continued by citing various items from his BIO. She noted the importance of having someone with his background is that he and the Assistant Commissioner, who she said has an associate degree in civil engineering, with their combined experience will enable them to perform a supervisory role and the “engineering function of government” totally, with the exception of when it will be necessary to hire a special engineers for major infrastructure projects. With regard to “review” in the Engineering Department, the Mayor said that would no longer need to be parceled out to a consultant, saying she did not even have those savings listed. She advised Council that the person the City was using will no longer be needed and those savings will be realized. She said she did not know how much that was “but it was tens of thousands of dollars”. She further stated that all the “review work” can be done at the “Services Department, Sewage Treatment Plant and the operations of the Water Filtration Plant and Distribution System”. She stated that as we go forward, trying to do proper planning for our infrastructure, these two individuals work will be vital to us and giving us advise about how we need to plan for our improvements to our streets, sewers, roads and water systems. She said that by doing this she was able to achieve savings of over \$325,000.00 and stated it to be her opinion, noting herself to be the person responsible for hiring these services, that members of Council and the public can rely on the ability of these individuals. She continued saying, “They have a far greater capacity to handle the work of these departments and this will give us the added bonus of covering the Engineering Office, which had not been covered previously”. She claimed the only issue had been paying Mr. Peck. She stated that she had projected a salary of \$70,000.00 but noted the Solicitor to point out the provision in the charter that said no “director” should make more than the Mayor. The Mayor said, “As a Commissioner and taking over four departments, it would be logical to me that we could make the argument, that a Commissioner is not the same as a director, particularly when that person is taking over four departments rather than one”. She said she asked if she could make the Mayor’s salary the \$70,000.00 but donate back, to the City, the difference between the Mayor’s \$60,000.00 salary and that of the proposed Commissioner but she was advised that was not possible either. The Mayor said that was the reason why she asked Mr. Peck if he would consider working for \$65,000.00 then she would move the Mayor’s salary up to \$65,000.00. She told Council that when she presented her budget she was not going to increase the Mayor’s salary from the ’09 level. She noted that the budget that we are operating from under these two months propose that the Mayor’s salary be approved with a 3% increase, which would make that salary \$61,500.00 but owing to the provision in the charter, Mr. Peck agreed to a salary of \$65,000.00. She stated, “I can tell you that even with that \$10,000.00 extra, we are more than paying for it in quality of work and in actual cost savings to the government.

In response to the Mayor asking for any questions, the President inquired about her proposed position for Mr. Peck and noted that he was not licensed in the State of Ohio. Acknowledging that we no longer have a class four operator at either of our treatment plants and the fact that it takes three to seven years to obtain a class four, the President inquired of the Mayor as to how this is going to be covered. The Mayor answered by saying “perhaps you haven’t had time, since you were so busy, to review a document that was put on your table tonight”. She said it was from Mr. Yandrich who, she said, saw her memo over the weekend from Mr. Peck, which stated he had been in both written and phone communication with the Ohio EPA Divisions of Drinking and Ground Waters and Surface Waters regarding the compliance requirement for operator status, saying they have full knowledge of her plan to use the services of Environmental Engineering Services interim contractors to fill the operator requirements at both treatment plants. She explained the plan that would utilize a class four operator from Environmental Engineering Services for 10 hours a week and advised Council that the State wanted their plan in writing and claimed that she has satisfied all the requirements of both the divisions of the state EPA. To Council, she said, “As we go forward, I will bring you back plans that we will require action on in the future”. The President informed the Mayor that as of 5:00 p.m. this evening he received a phone call stating that ..... before the President could finish the Mayor interrupted to ask if the phone call was from the Ohio EPA. In response to the President saying “no”, the Mayor said, “and this is the problem we have, Mr. President, that all manner of rumor and phone calls and messages to you and to the media and to anyone else that would listen, is trying to, basically, say that we are not doing what we’re saying we’re doing and what we are doing is in compliance with the Ohio EPA” saying, “they have a procedure that they go through with local government – we’re going through that process – we have the documentation completed and it is dated the 11<sup>th</sup> of January. So between last week, when we started the process, I myself put in several phone calls and they were totally aware of what we are doing and they understand it’s totally in compliance – there’s no problem – **there is no problem** that’s what I need to state”. In response to the President asking the Mayor if she received a letter from the EPA stating.... again the President was interrupted by the Mayor who emphatically said “not yet but when we get all the documentation finalized I’ll be glad to share it with you and the public”. The Mayor claimed this to be an on-going process and she wanted Council to be aware of it noting that the information in front of them came off the printer at 5 o’clock.

Councilman Haas said he would beg to differ with the Mayor on what the requirements are and what the letter set forth that she had typed up today. Mr. Haas said we clearly do not meet the requirements that I was told by Sarah Wallace of the Ohio EPA when I spoke with her on the phone this evening. He said he also spoke to a gentleman in the wastewater treatment department of the Ohio EPA and it was indicated to him by both people, that the City is required to have a class four operator on site forty hours a week in both facilities. Mr. Haas continued, referring to the letter, he pointed out that it states that Merrill Clay, who is a class two operator, to be on site, which he pointed out is not enough and that a Mr. Ernie Stickler, from Environmental Engineering Services on site ten hours a week. He pointed out the fact that this does not meet the Ohio EPA requirements. In response the Mayor asked that Mr. Peck be allowed to address that and she further stated, “what we have to realize is that there are all manner of exceptions when you are dealing with regulations”. She noted that “we have federal law, we have federal regulations; you have state laws and state regulations the fact

of the matter is the City has not had a class four operator at the wastewater treatment plant for over five years” and acknowledged the former director told her, himself, that he was only a class three. She again declared there to be “lots of exceptions that we must be aware of” and she wanted Mr. Peck to address this, “because this is his job to work with the EPA and to work with the engineering firm” The President pointed out that the former director, with the approval of the Ohio EPA, was working on his class four and grandfathered him as the responsible person in charge. The Mayor claimed that to be what she was saying - “there are all manner of exceptions so we need to be aware of those” and again noting the exception that was made with regard to Mr. Duncan. The Mayor felt this to be getting into a lot of technical areas that she wanted Mr. Peck to address and advised Mr. Peck that he might want to tell Council that this is standard operating procedure for a lot of small cities across the country. Councilman Basham echoed the President’s remarks about the letter he received from EPA, saying he got the letter where EPA approved the former director to be certified under EPA to handle our wastewater. Councilman Haas stated that in his conversations today with Sarah Wallace at the Ohio EPA she indicated to him that in order to get a class four license it was necessary to have years of management experience, be at a level three, take a test and write a thesis. He pointed out the fact that no one at the wastewater facility who has class three and the years of management experience necessary to be even close to even qualifying for the waiver the State of Ohio may give. Mr. Haas also noted that when speaking with Ms Wallace he asked her what a class four operator would earn in salary and, to her knowledge, there are four plants with class four operators in Southeastern Ohio - Stubenville; Cambridge, Ironton and Portsmouth. Mr. Haas further stated that Ms. Wallace indicated to him that in Cambridge and Stubenville class four operators responsible for the plant make well in excess of the \$51,563.00 that is being paid to the directors in Portsmouth but she did not know what they were paid in Ironton. He further stated that Ms. Wallace said the class four license are very difficult to obtain and that there are very few people in Ohio who have one, therefore they would command a significant increase. Mr. Haas noted that a class four operator in Columbus, Ohio makes well over \$100,000.00. Mr. Haas noted this information to come from a person of authority...the Mayor began to interrupt Councilman Haas and called for a point of order. In response to the President advising her that Mr. Haas was speaking, the Mayor kept insisting that she had a point of order. In response the President advised the Mayor that she could make her statement when Mr. Haas is finished. Mr. Haas stated that he spoke with a man on the phone tonight about this issue and he too has heard several stories about what needs to be done and what should have been done and what he is hearing from the Mayor is different from what the Ohio EPA told him on the phone.

The Mayor read Section 31 of the charter, which addresses the Mayor’s responsibility with regard to “Powers of Appointment and Removal” and claimed that it clearly states that this falls within her prevue as Mayor. She said, “No member of Council has any authority to be communicating with Ohio EPA about administrative issues nor about regulatory issue, quite honestly, even though I’ve spent more of my years, long actually, in environmental law, I wouldn’t have the audacity to think that I could understand the regulations because they continue to change, they change on a continual basis”. She continued, saying “I must remind this Council that under the charter you are stepping into waters that are the absolute prerogative of the executive. The only prerogative, the only authority that the charter provides in regard is that I bring my staffing requirement and funding requirement to you. I have told you and I’ve told the public that this proposed staffing plan not only provides superior capabilities in the employees that I have employed, but also a huge cost savings to this government well over \$345,000.00”. At this point she said she would like for Mr. Peck to address the issue, saying that he and their consultant have been staffing this on an hourly basis almost in the last several days.

The Solicitor said he believed everyone is losing focus on what this is all about. He advised that this ordinance is to establish positions and to establish salaries that are connected to those positions. Mr. Jones stated his concern with this to be that once again the cart has been put before the horse. To the Mayor he noted that she had said she had just “hired” Mr. Peck as her Commissioner of Engineering and Public Services and his concern is that there is no such position in the City of Portsmouth. He said that is not to say that the Mayor does not have the authority to hire and fill a position that has been vacated where there is currently have a position and establish salary. The Solicitor stated that the Mayor is absolutely within her discretion to come forward with this ordinance and request that these positions be put into place with the proposed salaries. However, he said his concern is, based on the statement that this gentleman has been hired, that the decision has already been made and now we are asking for Council approval. He said everyone is getting sidetracked with other issues and suggested that while Council may have concerns and questions about whether or not we are in compliance, he did not think that really affects this ordinance. The President said he takes that point very well and therefore he will address another question which was the position of “Chief of Staff”. He noted that to be another title that does not exist. He said he believed this particular position would be doing the job that was being done by the administrative assistant and therefore he would like clarification on that request. He requested a job description for this position so it can be compared with the job description of the Administrative Assistant. He noted the proposed salary to not be commensurate with the salary being paid to the Administrative Assistant. The Mayor stated that the “Chief of Staff” is not in any way commensurate with the position of an Administrative Assistant. She said, “The duties and responsibilities of my Chief of Staff far outweigh those of any administrative person”. She further stated that the education and skill levels that she requires for that position far outweigh those of an administrative assistant. The Mayor said, “Fact of the matter is, for personal reasons, my Chief of Staff tendered his resignation and I regretfully accepted it”. She advised Council that she will be advertising the position and in doing so it will be clear the level of skills that she requires for someone who handles a multitude of issues for her. In response to the Mayor saying this would be coming forth, the President asked if that would include an itemized list of responsibilities.

Councilman Haas said that as he looks at the positions named in the proposed ordinance under the Executive Department they are different than those that are listed under the Miscellaneous section of the proposed ordinance. He pointed out that one of the positions has been dropped and another one renamed from "Deputy Commissioner" to "Assistant Commissioner" and he was not sure that the statute or the ordinance, as written, follows any logical flow. He further noted that under the miscellaneous classification positions there is no Administrative Assistant listed there so there is no request for a salary even though there is a position listed above. The Mayor stated that her former Chief of Staff got the language from the Auditor's Office and he was trying to make the changes to it and then he gave it to the Solicitor for final review. She said when she asked the Solicitor about it today she did not see that there were any errors such as that. She said she even told the Solicitor that the Mayor's position did not need to be in here and she wanted the Solicitor's input on that noting that the position of Mayor already exists, saying, "we just have to address it in the budget but I wanted to tell you what I was going to recommend in the budget and why at this point, I was not going to wait until later". Councilman Haas asked if she were eliminating any of the positions in her office and she said "no". He again referred to how poorly the ordinance was written. The Solicitor said there were two issues, one being the way it was labeled as "deputy commissioner". The Mayor acknowledged that the position is that of "assistant commissioner". The Solicitor noted the proposed ordinance can be amended to reflect that. In terms of the other issue, he said he did not believe ordinance #63 can be repealed because that completes the entire salary ordinance. The Auditor acknowledged that to be correct and stated that the Mayor's staff tried to shorten this as much as possible because he was doing it at a time when the Solicitor's Office was not available and also noted that the Solicitor had not had chance to review the ordinance. With regard to whether or not the Mayor's position should or should not be in this ordinance, the Auditor said that was due to the fact that there was going to be a change in salary. The Mayor suggested amending the ordinance to reflect that should be "Assistant Commissioner" instead of "Deputy Commissioner", saying that is how she has been referring to that individual. The Solicitor recommended deleting the language in the first sentence that states "and to repeal Ordinance No. 63 of 2009". John Haas begged the question saying he is accepting a typographical error in that the deputy administrative assistant position (*not discernible*) but there is no request for compensation for that position. The Solicitor said he believed that position already exists with a salary attached to it and felt any change in that would have to occur in the budget. The Solicitor felt the intent of this ordinance is just to create three new positions and to raise the salary of the Mayor to be in compliance with the charter. The Mayor concurred with the Solicitor's remarks regarding the Administrative Assistant but noted that position has not been filled. She said they were trying to get their feet wet as to how that might work in the office given the fact they had a change of staff and how they needed to use the Administrative Assistant position. She advised this would come forward in the budget. The Solicitor recommended, for clarification purposes to just delete the Administrative Assistant position, saying, "you already got that under the "executive department" where it says "position". Councilman Haas said he would also ask the Mayor, if in doing this, is this legislation intending to do away with the positions formerly held by Chris Murphy, Richard Duncan and Sam Sutherland, noting there to be nothing in the ordinance about doing away with positions only about adding positions. The Mayor stated it to be her intent that those positions not be filled and "a discussion about whether or not it needs to occur at that time as to whether or not to make a change to the ordinance to actually eliminate the positions". She stated it to be her understanding that there was an assistant position in the water department and it was not filled until near the end of the year when someone was moved into that spot. She said she can address this at the time of the budget. The Auditor inquired, with regard to eliminating the position of Wastewater Director, is what is the intention and how long will Mr. Clay be fulfilling the position of director. The Mayor said she will be addressing that in the coming week and clarifying things for Council and also as the budget is developed.

For clarification, Councilman Haas asked if there was a Mr. Clay at the Wastewater Treatment facility who has a class II operator license and is now being paid the \$51,563.00 that is allotted to the Director of Wastewater. In response the Mayor said, "It's because I made – until we can have a formal changes, I made him an acting director"(sic). Mr. Haas asked if he were getting paid \$51,563.00 but was interrupted by the Mayor who said "yes, but that will change and that will be, I will probably be brining that back to you". (sic) Mr. Haas said he has a "kind of" handwritten note regarding the pay from the former administration. He noted the fired employees along with the former Mayor and his two assistants, the total of the salaries paid out was almost \$276,000.00 and what he is seeing here tonight is that by adding Mr. Peck at \$65,000; what would have been Mr. Mingus at \$49,800 as a Chief of Staff; \$50,000 for a Deputy Commissioner/Assistant Commissioner; \$65,000 for the Mayor and \$51,563.00 being paid to Mr. Clay we are at \$281,000.00. He said he does not see a savings of \$325,000.00 as indicated in your letter to Council. Mr. Haas requested that before the next meeting, the Mayor provide a breakdown on how she arrived at a savings of \$325,000.00 when she is creating these new positions at the same or higher pay rates than was being paid to the positions that they are, the Mayor interrupted Mr. Haas to state, "I'd be glad to provide that". Mr. Haas continued saying, potentially eliminating yet they have not been requested to be eliminated yet. The Mayor said, " I have not problem providing that in writing to the Council and because what you have to realize is on top of the pay is benefits". She stated that health insurance for a family plan is around \$14,000.00 per employee per year and when that along with pension and other..... she did not finish but said she would provide those figures to Council and that is what they will need to see. Mr. Haas asked that the Mayor include with that what her proposed pay out is going to be for these class IV operators that are going to be required by the City to meet the EPA requirements.

Councilman Basham, saying he is trying to stay on top of all this, noted to the Mayor that she has made public statements that we are going to end up in a possible \$800,000.00 deficit for the City in 2009. The Mayor stated the City to be "at least there in the General Fund" saying, "the last day that we had, Mr. Basham, indicated that our deficit, as of December 30<sup>th</sup>, the books had not all been balanced out and not everything had

come in and been squared away. At that point the General Fund is in a deficit of \$800,718.00". Mr. Basham said he truly applauded her for trying to bring in qualified people to do the job but he personally has a concern when we are raising pay, and granted that we could use a savings of \$325,000.00, but he was concerned as to whether or not this would offset the expected deficit with which the City is going to have to deal. The Mayor stated that in and of itself it would not offset the expected deficit but she thought the three hundred and some thousand dollars "is nothing to sneeze at" and that is what she is indicating that there will be better management, in her opinion, "through this scheme of using Commissioner and Assistant Commissioner and then the operators, we don't need, at the Water Treatment Plant and the Waste Water Plant, we only need operators operating the facilities then the Assistant Commissioner and Commissioner can take care of all the engineering and the water (*not discernible*) issue". She further stated we would be able to achieve that savings but acknowledged is not going to "wipe out" the deficit. She further acknowledged that she has to come up with the final numbers and that she would have to start working on that. Councilman Basham, noting that he really hates to get back into the EPA issue and acknowledging the Mayor had stated that she was going to get the employees into programs for class III and class IV EPA certification, said he thinks that if Council approves the requested positions and the employees don't pass those tests then we could be put in a bind. He wanted to know if Council is then going to see the Mayor coming back asking for another hire in of someone that has that certification. The Mayor said she did not think so, saying "we have the individual who is Acting Director at the Wastewater Treatment Plant is (*not discernible*) for his class III in may then he will be doing his dissertation after that". She said this is where she really needs Mr. Peck and our engineering (*not discernible*) to jump in to just explain that, if they wanted to hear a further explanation. She stated that even if at the end of the day, no matter what changes might occur, we are going to see a net significant savings".

Councilman Albrecht, acknowledging a lot of things to have been discussed, asked if Council is going to be provided with job descriptions for these proposed positions. The Mayor advised she is in the process of narrowing down exactly how that fits, yes we will be able to give those to you this week". To Mr. Albrecht, the Mayor said, "I wanted to describe to you what (*not discernible*) these individuals and give you their backgrounds. She expressed her appreciation for the fact that the Council would like information in advance noting that she has before said publicly many times that so would she. She said she hoped that Council realizes that she "walked into an office Monday with no organization and so we kind of jumped right in the middle of the fire trying to get as much accomplished" she stopped at this point and began relating how various vendors had contacted her on Monday regarding unpaid invoices. She said she did anticipate being able to get Council information on a regular basis, so they won't have anymore things to which they would react.

The Auditor said he is aware of the one hundred and fifty some thousand saying that had to do with a water/sewer project that was ongoing and is being done through engineering. He advised this to not be something that has been presented and not paid through the Auditor's Office. He noted this to be just for clarification and not the point of his question saying his advise to the Mayor's office earlier this week was that we currently do not have these positions in the salary ordinance and he does not know how Council will vote but as far as the reason this came about was because a question was put to him as to how these positions are put into effect and getting them paid. He acknowledged this to be up to Council as to what they want to do with the salary ordinance but he wanted to advise that in order for them to be paid at all there needs to be either this ordinance passed with the changes it effects or they would have to revert back to existing positions. He said he has been hearing that the Mayor is going to provide Council with information in the weeks to come and that is not going to work as far as if Council is wanting to put these positions into effect immediately. The Mayor stated that this sounds like one of those "have faith, I'll bring back the information to you" but in a way that all she said she can do. She stated, "As a matter of course, I've been in office one week and in trying to keep the documents flowing and so forth and getting the work accomplished, I had no option but to bring this to you for action now, I just had no option and then I'm having to ask you to wait for my further, as Mr. Albrecht requested, the job descriptions and my plan to roll out to show you the savings as I bring back the planning documents, the project documents on the budget for you". She reiterated that was all she could do for Council. She said she did need these approved so that people can be paid.

Councilman Haas said he would just indicate that his dissatisfaction is with the Mayor came into office and on her first day made a bunch of changes without consulting with Council in hiring people for positions that don't exist and is now coming to Council and requesting them to bear with her while she provides the information. He said it seems to him that he has heard this theme a couple of times this evening that the cart is being put before the horse.

Councilman Johnson claimed that the charter allows the Mayor to combine departments and be run by one person and he did not care what that person ends up being called. He said he believed the ones that she's combined so far make sense given their technical expertise requirements. Mr. Johnson stated that we can finally have someone, once they "go through the Ohio part and get certified here" who is a City engineer or someone equivalent to that. He claimed this to be after years and years of begging for a qualified City Engineer. He said he thought it to be incredible that the downtown business community saying that when he "built up" the Emporium not having a City engineer was a detriment and he felt it to be a "great detriment to the development of the downtown". With regard to the Mayor's salary, Mr. Johnson said he disagreed with one thing the Mayor said when she stated that she did not want to deal with the charter piece meal and cited those three or four issues that he felt needed to be reviewed.

The President, noting the Mayor had stated that she did not necessarily want to give herself a raise, said he did not want to make positions not important but at the same time these individuals are just starting. He recognized Mr. Peck's thirty years experience and his expertise but at the same time he did not want to

have to increase the Mayor's salary. He recommended that that the Mayor's salary stay as projected in the 2010 budget from the previous Mayor and have Mr. Peck's salary to be at the 2009 level. The Mayor asked the President if he was suggesting that she should ask Mr. Peck to work for \$59,000.00. To which the President replied in the affirmative. With regard to a "Chief of Staff", the President pointed out that nobody knows who this person is going to be or what the job description entails. He said it is hard to approve a salary of \$49,800 when Council doesn't even know what the requirements or job duties are. He said he has no suggestion with regard to that position and felt the assistant commissioner's requested salary to be *(the President's words could not be heard above someone coughing)*. Councilman Albrecht said he just wonders why the job of engineer was not advertised, noting there to be local people who might need a job and he just does not like the idea of hiring from Lexington. The Mayor said she was not in office so she could not advertise and stated concurred with Mr. Johnson with regard to any administration bringing in his or her own people and that is all she is doing, saying, "I'm just bringing in people that I know can do the job. Under the charter I have the authority to do that as Mr. Johnson indicated I also can combine departments and I can even make myself the head of a department and that's all within the charter provision". Councilman Johnson stated that the per annum amount that is being requested for the Mayor and Engineering Services Commissioner is only \$3,500.00 more than what is in the proposed budget for 2010. He felt that needed to be made clear and noted the total to be \$7,000.00. He said the Mayor has already made it real clear that she does not want hers to stay there and I have already suggested a solution for that". With regard to Mr. Peck, Mr. Johnson said he is already losing money from his previous position as it is now by taking this amount and felt the City to be lucky to have him at this price. The President said he thinks it is a matter Mr. Peck's choice as to whether or not he wants to come to Portsmouth at whatever salary Council designates. The Mayor said, "again I have to go to the position that we had an election – the people spoke- the people do not want things run like they've been run. People are writing letters and e-mailing and calling and they are saying the silent majority is with you, you're making the changes nobody had the guts to make, we've been doing this for more than thirty years. Thank you, thank you, thank you". To Council, she said, "You're not hearing that all you are hearing is from a bunch of disgruntled past former employees and therefore (the Mayor was interrupted by the audience and had to be gavelled by the President), she continued, saying "I have the right to speak. I am charged by the charter, I'm charged by the charter to run this government and what you are doing, by telling me that you think I can have qualified civil engineer do the work of this government and you think I can get that for \$59,000.00 is absolutely not within your prevue. I'm telling you what we need and who we can get and we have, as Mr. Johnson stated, the ability for the first time in years to have people who are qualified for the job. He is a civil engineer and that's the job that has to be done". She continued, saying "If, as a Council you're going counter to the charter by taking away any of the tools by which I have to do my job". In response, the President advised the Mayor that he did not believe Council to be taking away any of her tools or any of her authority but as for as Council's prevue, he advised her that Council is within their rights to set compensation guidelines, saying "we are within our rights and our authority as the legislative body, we are within our rights". The Mayor began to speak, saying "Yes, sir , and I have not had the opportunity, Mr. President to present to you data that is going to show you that we have many people in the government that are making more than \$60,000.00 a year". The President said he does not argue that point but this is Portsmouth and we have been in a budget issue for the last couple of years. He noted that last year and the year before, the heart of the community felt the government was spending too much, you're paying too much, watch the money so, okay now that is what we are trying to do. He told her that Council wants to give her latitude for these positions, if they are warranted, but, at the same time, they have to make sure that they can take care of the City.

Councilman Basham said he felt the issues needed to be separated. Especially noting himself to be new to this process he does not have any axes to grind. He said he just barely even knew the people that were let go and he really has not gotten to know the people who have been hired. He said he campaigned against Bob Mollette but felt Mr. Mollette to have been right in wanting to see these plans. He said he did not like the fact that the Mayor is telling Council that she wants these positions created, noting he did not care if she fills these positions and she can fill them with whomever she wants, but bring him a plan showing what she is combining so he can see it on paper and he would have no problem with the request. The Mayor again noted that she has only been in office for a week and stated that "the plan, as described, is the plan". In response to Mr. Basham asking, "what plan", the Mayor said "the plan is to combine those four departments under these two individuals direction and in doing so I will show you how we are going to save over \$300,000.00 plus we will have the expertise of a civil engineer over all those departments". Mr. Basham asked her why she did not do that when she brought Council this ordinance to which she replied, "but I did". Mr. Basham pointed out that there is no job description with it. The Mayor responded that the job description was a verbal explanation, saying, "a job description of the duties and responsibilities of any of the directors, I don't know that you've ever seen those" and stating that she is not sure she's seen them either. Mr. Basham said he cannot say that he has but his concern is about what the job description says, noting that she is asking Council to create a position...the Mayor interrupted by concurring and stating "with the functions of which I described to you". Mr. Basham noted the description to be a verbal one and advised the Mayor that he is a "in writing" type of person and he really needs to see the job description in writing. The President noted that Council has not heard anything about the job description for her proposed "Chief of Staff" and further noted that she had said the person in this position would perform duties as she prescribed. The Mayor asked the President if he knew what the duties of the administrative position were. In response, the President advised the Mayor that he did not and that is why Council wants to compare the duties. He noted that the City Clerk might have that description.

Councilman Haas moved that this constitute a first reading.

The President reminded everyone that the Auditor will need something passed in time to pay individuals for the payroll period ending 1/15/10. The Auditor said the positions that are being proposed would not be in effect if this is not passed. He noted that since this is a first reading he would have to revert to what is currently in place. Councilman Johnson said he felt it is worth having it stay in place so that the Mayor is given ample time before a second reading to get the information that has been requested. He said he would not advise Council to bypass three readings. The Mayor stated that had it not been debated the issue that she had wanted to be brought up was that it be a first reading anyway. She said this would give her time to bring Council the written material requested. The Auditor noted that any changes that are ultimately authorized can be made retroactive.

There being no further discussion the roll was called. **VOTE: ayes 3 (Noel; Johnson; Malone) – nays 3 (Haas; Basham; Albrecht) The motion failed. The President advised the Mayor to bring the issue back to Council.**

In response to the Auditor asking for a clarification, the Solicitor stated that the Mayor has been advised to bring the matter back before Council.

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

Richard Duncan 109 Judy Lane, the former Director of Wastewater, advised Council that he would try to keep his remarks to five minutes but asked for the courtesy of allowing him to finish if he should not. **(at about this point the Mayor got up from the table and exited the room through the City Clerk's office).** Reading from a prepared statement, Mr. Duncan advised Council that he was terminated on January 4, 2010 by way of a letter from the Mayor. The letter advised Mr. Duncan that due to a restructuring his services would no longer be required effective January 4, 2010. Mr. Duncan noted it to be clear that Ms. Murray did not give any consideration to the ramifications that would be brought to the City of Portsmouth, noting that the Ohio EPA requires that water and wastewater plants be operated by individuals with proper levels of certification. Mr. Duncan advised Council of correspondence that Mr. Michael Yandrich, District Representative for the Ohio EPA e-mailed to the Mayor, which he read. The letter advised the Mayor that as of Mr. Duncan's termination the City was no longer in compliance with Ohio Administrative Code and that the City is subject to substantial fines. Mr. Duncan provided Council with the status of his license and his qualifications. He also advised Council of the requirements for someone to operate the water and wastewater plants and the exemption he received, which was effective until November 1, 2011. Mr. Duncan stated that the exemption he was given was to allow him, as Director, sufficient time to complete his Class IV approval process. He said he explained these facts to Ms. Murray following her election as well as advising her of the serious ramifications for the City of not having a qualified operator in charge of the Wastewater Treatment Plant and the difficulty in getting a qualified Class IV operator. He said he would have his Class IV license well before the November 2011 deadline. Mr. Duncan felt City Council and the citizens should demand to know Mr. Peck's qualifications and if he is a registered engineer in the State of Ohio. He also felt the public and Council should know what experience Mr. Peck has as a water or wastewater treatment operator. Mr. Duncan advised Council that he is registered in the State of Ohio as a professional engineer, a Class III Wastewater Operator and a Class III Water Supply Operator with extensive experience in the design, construction and operation of water and wastewater facilities, while Mr. Peck's experience is largely transportation related. Mr. Duncan also felt that the termination the Water Works Director, San Sutherland has left the City in a similar predicament with regard to the water treatment and distribution system of the City and out of compliance in that area as well. Mr. Duncan related Mr. Sutherland's qualifications and experience, which included 21 years in his field. He reported Mr. Sutherland to be extremely well-respected by other water professionals around the state of Ohio and y Ohio EPA. He also noted that Mr. Sutherland is frequently consulted by other water plants and has conducted many operator training classes in our state. Mr. Duncan further noted that the Mayor has stated that Mr. Sutherland's termination was based largely on the advice of a convicted felon, a former employee, who was fired by Mr. Sutherland for theft and other criminal acts. The President reminded Mr. Duncan to refrain from personal references. Mr. Duncan described Mr. Sutherland's termination to be "especially dastardly" and should be reversed immediately "for the safety of the City's drinking water and for the sake of common decency" **note: Mr. Duncan exceeded his five minutes but was allowed to continue by Council.**

Councilman Albrecht was excused at 9:20 p.m. for medical reasons.

Marty Mohr – 1605 Lawrence Street & 1552 Gallia Street (his place of business) said he was just informed by a City water operator that reports were due yesterday at the State of Ohio EPA, however, to date, the City has failed to submit them. He said he asked the Solicitor to look into the allegations that the Mayor had instructed a woman, lab tech, to acquire Mr. Sutherland's pass code to make the reports. Mr. Mohr inquired as to the safety of the City's drinking water, noting there had been qualified people on staff but wanted to know who was operating the plant for the past eight days. He said he has requested the Solicitor to please look into the possibility that the Mayor be required to pay any fines that are placed on the City. He said the taxpayers of this City do not deserve the fines, noting that she terminated "two of the finest individuals" that the City has ever had in those departments. He described Mr. Duncan and Mr. Sutherland to be highly accredited in the State of Ohio and that the EPA has nothing but good things to say about both of them. He said either one of them could go anywhere and make twice the money they are making at our facilities but they have devoted their lives and their family's lives to Portsmouth, Ohio. He expressed his love for this City and said people cannot be allowed to destroy it.

Chris Neff – 2412 Mabert Road said he was certainly glad, as a concerned citizen, that he can call the EPA and speak with someone who told him today at 3:50 p.m. that their office had not received the name of a certified Class IV operator from anyone in the City of Portsmouth. Mr. Neff said he has a problem with minimum staffing requirements and personally does not think that to be very good. He said he is not a disgruntled dismissed employee and neither does Mr. Duncan appear to be. He said he has not spoken to any terminated employee about their dismissal; therefore he is not privy to making a judgment as to how disgruntled they are. He said he is not a politician either but he is a concerned citizen that is probably going to be leaving this City because of the condition it is in.

**Note: During Mr. Neff's remarks, the Mayor returned to her seat.**

Dee Penix – 1708 Hutchens Street said she was not going to speak tonight but she sat here, as everybody else did, listening to all this, which she said could have been avoided by waiting one week for the Mayor to be able to talk to the members of Council about what she wanted to do. Mrs. Penix said she did not think the water, the sewer, the service department or anything else could have been so bad that it could not have waited one week for Council's approval. She stated her problem to be that the Mayor had stated that the charter was plain enough that even the citizens could read it and understand it. Mrs. Penix said she understands it noting that Council approval is needed for the number of employees in each department and the salary of each employee. She said I am not going to find fault with anyone but one week would have saved the City from being put through this. She claimed this City to be torn apart worse now than it has been for years and that is not what she wants for her city. She said she does not see this City getting any better, if this is going to continue.

Thomas Rodriguez – 3231 Old Post Road said he has heard sour grapes mentioned and felt that measure of hypocrisy that is found in politicians that pretty much started somebody's campaign when they weren't selected by members of Council and stormed out of this room irritated and upset.

He said he was looking for is to have "children playing" signs erected in his neighborhood, noting there to be fifteen to twenty kids playing along the streets in his neighborhood as well as food delivery people driving through his neighborhood. He also suggested a change in the speed limit. He further noted a neighbor to have mentioned a sewer project at the top of the hill and inquired as to the status of that.

Harald Daub =1221-22<sup>nd</sup> Street reiterated previous remarks he has made about moving the Council meetings to somewhere else so people would not have to stand outside in the hall.

He claimed there to be people who do not want to see the Mayor succeed. He also acknowledged having been to Council meetings "many times" when there was only five people in attendance. Mr. Daub reiterated previous remarks he has made about the public being cheated out of two million dollars; drugs and prostitution. He also said Council never questioned any firings by the former Mayor.

Jim Kalb – 2234 Vinton Avenue noted it to be the Mayor's prerogative with regard to contracting with an insurance company but it is his understanding that the Mayor is looking at changing the type of liability insurance from a funded program for which the City pays a premium to a public entities pool, which, he said money will be saved on the premium but the City is being put in a very liable situation. He said the City will be a lot more responsible for claims and in order to opt out of this program you pretty much have to be rid of all your claims. He said one of the first claims he remembers from 16 years ago when he was on Council was how elated the more experienced members of Council were that they had their claims down to a couple hundred thousand dollars and were fortunate to have the money to get out of the public entities pool. He said it is good for some people but with a City like Portsmouth with all its litigation over law suits, he would suggest this be reviewed and maybe discuss with the Mayor what her options are.

With regard to discussion about Class IV operators, Mr. Kalb said even if there are employees who are planning on applying for their Class IV license it would take time and if their salaries are reduced they will not want to stay around here, they will go out of town to make more money. With regard to Mr. Peck going to cover all the various departments, Mr. Kalb said the City paid for commercial plans examination and that is something that will still need to be done.

With regard to the mention again of two million dollars, Mr. Kalb said that the City had a couple of opportunities to get that money back but it did not happen because of the outcry.

Mr. Kalb noted several people had not been mentioned tonight and noted one of them to be Crystal Weghorst, his former Administrative Assistant. Mr. Kalb said she was an excellent employee. He acknowledged it to be the Mayor's right to replace the staff and he did not feel anyone had a problem with that, however, he has a problem with the fact that Mrs. Weghorst was led to believe,. By the new Mayor, that she had three months before she would be terminated. He said she was even advised of this by the, now previous Chief of Staff that she would be around for a while. However on the first day the Mayor terminated her. He also agreed that perhaps if the Mayor had waited a couple of days things might have worked out better. He also felt Daniel Saez knew his job and was invited by granting authorities in Columbus to sit on their boards to help develop plans for distribution and guidelines for grants.

**Miscellaneous business and reports:**

City Clerk's Report

1. Received an annual report from the Solicitor pursuant to Section 733.62 of the Ohio Revised Code.
2. Oaths of Office  
Kevin Johnson for the position of 1<sup>st</sup> Ward Councilman  
Nicholas Basham for the position of 3<sup>rd</sup> Ward Councilman  
John Haas for position of 5<sup>th</sup> Ward Councilman  
David Malone for position of President of Council  
John Haas for position of Vice President of Council  
Jo Ann Aeh for position of City Clerk

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

The Mayor had no report.

President's Report

1. Reappointed Gary Clark to another term on the Zoning Board of Appeals and reappointed Lynn Daehler to another term on the Hardship Appeals Board.

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

Miscellaneous business from City Council

6<sup>th</sup> Ward Councilman Noel had nothing to report.

5<sup>th</sup> Ward Councilman Haas advised everyone that his e-mail address is [jrh@rhlawfirm.net](mailto:jrh@rhlawfirm.net)

He also advised Council that, while not familiar with the procedure, he wants to submit an ordinance for consideration of a first reading at the next legislative session. He said the ordinance is in regards to a Community Workforce Agreement. He said he did not have a chance to make copies this evening for everyone but provided one to the City Clerk for circulation. He said he would be available to answer any questions with respect to the ordinance.

3<sup>rd</sup> Ward Councilman Basham congratulated everyone who stayed to the end of the meeting.

He noted it to have been a very busy week and that with all the snow he has had several snow days, which gave him time to tour the filtration plant and wanted to let the community know it is a very impressive facility. He said he was not even aware of some of the technology and things that have been implemented at the plant. He said he learned a lot this week and was glad to learn that the City of Portsmouth provides a lot of water for the county and with all the recent events involving the EPA he felt it to be very important because decisions made by the City affects a lot of people in the county.

Mr. Basham reported that he also toured the Police Department and wanted to apologize to them. He said he knew the department was not a beautiful place but did not realize how bad it really was. He said he hoped that at some point, if not this year, in the next few years we can work to do something to improve City-wide working conditions.

With regard to the McKinley School property, Mr. Basham should be looked at as a possibility for tax revenue. He acknowledged some of the constituents to have some good points with regard to traffic flow. He said he would hope the Traffic Committee could be used to address some of those problems so that the people who live there are not negatively impacted by what is happening with that possible development.

He thanked the Rock Hill High School Band Boosters for loaning us their speaker for tonight so it could be placed in the hall and he hoped that it worked.

Mr. Basham expressed concern over the change in insurance agents. He noted Portsmouth Insurance was the local person we went to and they worked with Anthem, the City's provider. He said the change that was made to Mark Harner's, which is in the City limits, goes through a middle man, which is Freedom Choice Benefits out of Jackson, Ohio. He said he felt an extra step has been added to the process. He said he called Mark Harner's office, in an effort to be prepared for Council meeting, and was told that he had to call the Jackson office. Mr. Basham, to the Mayor, said he really wished she would check on that because he feels that instead of streamlining the process, we have added a middle man. He said he has spent five days really reading the City charter and read from Section 62 – Alterations in Contracts and expressed his hope that the City has not violated a contract with Portsmouth Insurance.

Mr. Basham asked the Mayor if the company that the City is working with in regard to providing us with a Class IV operator for the wastewater treatment plant is the same company who was suppose to do the study on the floodwall that was discussed a couple of meetings ago. The Mayor did not respond but Mr. Peck, sitting behind her, said it was not.

2<sup>nd</sup> Ward

The President had nothing to report from his ward, noting that all concerns have been addressed.

In response to the remark about some people not wanting the Mayor to succeed, Mr. Malone said he among all the people in the City wants the Mayor to succeed because if she does then we all succeed. He acknowledged that they may not agree on everything but he wants her to succeed.

With regard to the two million dollars that was mentioned, he reminded everyone that no one presently on Council was here when the deal with Marting's was made. He noted, however, that we all had the opportunity to get that money back as a City but the voters decided otherwise and that choice is respected, but as a Councilman he is going to make decisions that he feels is right for the City.

1<sup>st</sup> Ward

Councilman Johnson, with regard to the proposed development on Kinney's Lane said if the minutes are actually read there are some who were concerned about Mr. Haas' amendment regarding the change to the codified ordinances especially the part about eliminating Council holding a public hearing.

The Auditor had nothing to report.

The Solicitor said he felt a public hearing should be scheduled with regard to the McKinley School property rezoning request and, in order to provide for a thirty-day notice, suggested the hearing be scheduled for the second meeting in February.

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City Clerk

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President of Council