

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING
Monday December 18, 2017
6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on Monday December 18, 2017 at 6:00 p.m., in the Council Chambers of the Municipal Building.

Mayor James D. Kalb called the meeting to order. A moment of silent prayer was observed followed by The Pledge of Allegiance to the Flag.

Roll Call showed the following members to be present:

Kevin W. Johnson	1 st Ward
Jo Ann Aeh	2 nd Ward
Kevin E. Johnson	3 rd Ward
Jim Kalb	4 th Ward
Gene Meadows	5 th Ward
Thomas K. Lowe	6 th Ward

Also present was City Manager Derek K. Allen, Solicitor John Haas, Auditor M. Trent Williams and City Clerk Diana Ratliff.

Council dispensed with the reading of the Journal for the regular session of November 27, 2017, special session of November 30, 2017, and regular session of December 11, 2017 on a motion by Councilman Kevin E. Johnson.

Councilman Kevin W. Johnson motioned to add on the agenda item **7(n)** an Ordinance authorizing the transfer of \$142,000.00 from General Fund No. 101 to Health Department Subsidy Fund 250.458 regarding the ten percent (10%) raise for non-union employees.

Councilman Kevin W. Johnson motioned to add on the agenda item **7(o)** OBJECTING to the application for annual renewal of liquor permit for Scotts Columbia Music Arena LLC, dba Columbia Music Arena.

Councilman Kevin W. Johnson motioned to add on the agenda item **7(o)** OBJECTING to the application for annual renewal of liquor permit for Dusty Mug LTD, aka Richard Noggins Pub.

Councilman Kevin E. Johnson questioned if a resolution was needed if Council voted them down. Councilman Kevin W. Johnson stated that was the proper way to vote by introducing them to the table. Councilman Meadows stated there was an issue with the way the proposal had been made and added that Solicitor Haas suggested he (Meadows) and Mayor Kalb should abstain from issues regarding the Columbia Arena because of personal relationships that they have or had and if that was the case they were not allowed to vote to add them to the agenda. He said that Mr. Haas would need to state whether it was a conflict or not a conflict to add them to the agenda or they need to be broken into three different add-ons and not one vote. Solicitor Haas stated that a vote for each individually would need to be done. Solicitor Haas ask Mr. Meadows what the relationship was with Ms. Scott. Mr. Meadows replied that he rented an office from Bluemont Corporation and she sublets her own office and her own Corporation/Practice from him (Meadows) and that there was no partnership or business relationship, they were just in the same building. Solicitor Haas ask if they shared fees or anything and Mr. Meadows replied it was landlord/tenant and Mr. Haas stated that he didn't have a problem with him voting.

Councilman Kevin W. Johnson withdrew the original motion and introduced a motion to add to the agenda item **7(n)** an Ordinance authorizing the transfer of \$142,000.00 from General Fund No. 101 to Health Department Subsidy Fund 250.458 regarding the ten percent (10%) raise for non-union employees. The motion carried viva voce: **VOTE: ayes 5 – nay 1 (G. Meadows)**

Item added
to the
agenda

Councilman Kevin W. Johnson motioned to add on the agenda item **7(o)** OBJECTING to the application for annual renewal of liquor permit for Scotts Columbia Music Arena LLC, dba Columbia Music Arena. The motion was defeated by viva voce: **VOTE: ayes 3 – nay 2 (G. Meadows and K. E. Johnson) – abstain 1 (J. Kalb)**

Councilman Kevin W. Johnson motioned to add on the agenda item **7(o)** OBJECTING to the application for annual renewal of liquor permit for Dusty Mug LTD, aka Richard Noggins Pub. The motion was defeated by viva voce: **VOTE: ayes 3 – nay 3 (G. Meadows, T. Lowe and K. E. Johnson)**

STATEMENTS OR REMARKS FROM CITIZENS ON ITEMS ON THE AGENDA

Marvin Johnson – 3121 Robinson Avenue – his item was not on the agenda.

Chris Smith -1544 Charles Street – He spoke with regard to the 10% raise for the Health Department non-union employees. He said that he assumed that meant the Health Department was included also, but with them being approximately 90% grant funded they don't have the funds within their own Health subsidy to pay the retro-active raise. He was requesting that the funds be transferred from the City General Fund to the Health subsidy. He said they have thirty (30) employees, seven (7) of which were General Fund employees, 23 were grant employees and for the past eight years seventeen (17) of those employees have seen no changes in their salary. He added that eight (8) of those were new hires, and seven (7) had moved to different positions within the Health Department. He gave an example of Wendy Payton who was the Animal Control officer and when we were going through the fiscal emergency they were able to cut a code enforcement position and move her into that code enforcement position as well as salary, plus she maintained her job as Animal Control Officer which saved the city about \$16,000. They also moved four (4) employees from hourly to salary Environmental Director became Health Commissioner six years ago and he had a change in salary at that point but did not receive a raise as Environmental Director and hasn't received a raise as Health Commissioner. He said that one employee moved into a Nursing Director position which was hourly to salary. There were also two other employees moved from hourly to salary to save the City money. Mr. Smith stated that Andy Gedeon had had a raise but that was more of an adjustment to match him with the other directors and was also the Deputy Health Commissioner. He reviewed some of the work that had been accomplished: 72 houses had been condemned, \$23,000 brought in by the Land Reutilization, they were on-call 24/7 with animal control, they brought in an extra \$700,000 to fight the drug problem, they had \$50,000 worth of Narcan that had been given to the Fire Department, they've boarded up houses along with help from Engineering and other city staff. The Land Reutilization Program gave them the ability to give properties to the County which saved the city \$320,000 in tear-downs. The Nursing Department was doing a great job with the employee based clinic, treating all city workers and their clinic revenue was set to substantially increase next year which will keep them off the city budget. Their total budget was \$3,000,000, the city provides \$675,000 and they bring in about \$200,000 revenue with the point being that the city only provides about \$500,000. He said with all the cuts in the past eight years they haven't cut any services but have increased their services and the grants provide the public health workforce during an emergency such as the ice-storm, H1N1, grants supply a lot of office supplies, computers, training, conferences, I.T. support. He hoped that Council wouldn't penalize these city employees just because they get their funding from another source.

LEGISLATION

The clerk gave a **third reading**, to an Ordinance authorizing the City Auditor to amend appropriations to reflect actual revenues and expenditures in order to balance and close the City's books for the fiscal year 2017.

Councilman Kevin E. Johnson motioned that this Ordinance be passed.

**Ord. #68-2017
 Balance and
 close the city's
 books for 2017**

There were no further questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **second reading**, to an Ordinance approving and ratifying the recently negotiated collective bargaining agreement between the City of Portsmouth and Fraternal Order of Police/Ohio Labor Council Dispatchers Unit for the period beginning January 1, 2017 through December 31, 2019.

Councilman Kevin W. Johnson motioned that the three reading rule be suspended.

The role was called. VOTE: 6 ayes – 0 nays, the rules were waived.

**Ord. #69-2017
 Ratifying the
 contract for
 Fraternal
 Order of Police
 Dispatchers
 Unit**

Councilman Kevin W. Johnson motioned that this Ordinance be passed.

Councilwoman Aeh ask if there were Memorandums of Understandings attached to their contract because Council was only being ask to ratify the contract and the Memorandums of Understandings should be separate. Manager Allen stated that he spoke with Attorney Ben Albrecht and was told that it was a common occurrence and they don't want them in the contract and that contracts got approved all of the time with Memorandums of Understandings attached to them. Mrs. Aeh stated that Memorandums of Understandings have always been presented and approved separately because if they are all one as presented when we ratify the contract that would make them a part of the contract. Mr. Allen said they were part of the contract but they weren't in the body of the contract because if they were then when the contract expired the Union does not have to negotiate those which was why they were deliberately not a part of the body of the contract and when the contract expires the Memorandums expire. Mrs. Aeh stated that in the past the Memorandums have been accepted separate from the ratification of the contracts. Councilman Meadows ask if the Memorandums of Understanding require an expenditure of funds in excess of what would be approved in the contract. Mr. Allen said he didn't really know how to answer that question but it was the same as what was in the AFSCME contract. Councilman Kevin W. Johnson advised that the insurance provisions were in the M.O.U. not in the contractual part of it. Mr. Allen said that it was negotiated as part of the contract and was negotiated specifically as a M.O.U. and would be interpreted as a benefit to the city, but if it was included in the contract then when up for re-negotiation the Union would not have to negotiate it or we have to trade something as a part of the negotiation but when it's in the Memorandum of Understanding it goes away and the Union would have to

negotiate it again. The M.O.U. was only for the life of the contract. Mayor Kalb ask Solicitor Haas if this was the proper way for Memorandums of Understandings to be attached. Solicitor Haas replied that it was like an attachment to the contract and part of the contract and expires when the contract expires, however if it was in the body of the contract it would not expire. Mr. Haas stated that in the past the contracts have had provisions that the city had been stuck with and didn't intend to or want to be stuck with, and that finally some of those have come out with Mr. Albrecht negotiating these contracts. It has worked out for both the city and the unions as Memorandums of Understandings as part of the contract so that it would expire when the contract expired and would be open to renegotiation but does not become a part of the contract itself that will live on. Councilman Kevin W. Johnson said that in the eight years he had been here the only time that we approved a M.O.U. separately was when an M.O.U was written separate from the contract. He said that in the past the contract was ratified and if a M.O.U. came along later separate from the contract then it would be requested to approve separately. Solicitor Haas stated that as far as he knew the City of Portsmouth had never had an MOU as part of the original contract negotiations, whether that was because they didn't know you could do that or some other reason, but this was different than anything that had ever been done in the last 24 plus years. He added that they had MOU's in the last several years where the city had negotiated some concessions from Unions with respect to insurance premiums, raises or whatever but those were done separately because they were modifying the original contract. Mr. Allen said that it was a negotiation strategy and Mayor Kalb stated that he understood.

There were no further questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **second reading**, to an Ordinance amending Section 169. – Life Insurance of the Codified Ordinances of the City of Portsmouth, Ohio.

Councilman Kevin W. Johnson motioned that the three reading rule be suspended.

The role was called. VOTE: 4 ayes – 2 nays (G. Meadows, T. Lowe), the rules were waived.

Councilman Kevin W. Johnson motioned that the Ordinance be passed.

There were no further questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **first reading**, to an Ordinance authorizing the transfer of \$3,470.20 from Unclaimed Monies Fund No. 803 to General Fund No. 101 accumulated for year 2013.

Councilman Kevin W. Johnson motioned that the three reading rule be suspended.

The role was called. VOTE: 6 ayes – 0 nays, the rules were waived.

Councilman Kevin W. Johnson motioned that the Ordinance be passed.

Councilman Kevin E. Johnson asked if this was a house cleaning measure and Councilman Kevin W. Johnson replied that he requested it be passed so that it could be on this fiscal year.

There were no further questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **first reading**, to an Ordinance authorizing the establishment of Fund No. 258 Rural Health Opioid Program and further authorizing the acceptance and appropriation of funds as received within this new fund.

Councilman Kevin W. Johnson motioned that the three reading rule be suspended.

The role was called. VOTE: 5 ayes – 1 nays (G. Meadows), the rules were waived.

Councilman Kevin W. Johnson motioned that the Ordinance be passed.

Councilman Kevin W. Johnson stated that he would be requesting the reading be waived on items that need to be cleared in this fiscal year.

There were no further questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, the Ordinance was passed.**

**Ord. #70-2017
Amending
Section 169
Life Insurance**

**Ord. #71-2017
Transfer of
unclaimed
monies for
year 2013**

**Ord. #72-2017
Establishment
of Fund No 258
Rural Health
Opioid
Program**

The clerk gave a **first reading**, to an Ordinance amending Section 169.10 of the Codified Ordinances of the City of Portsmouth, Ohio – Health Insurance Premiums.

Councilman Kevin W. Johnson motioned that the three reading rule be suspended.

The role was called. VOTE: 4 ayes – 2 nays (G. Meadows, T. Lowe), the rules were waived.

Councilman Kevin W. Johnson motioned that the Ordinance be passed.

Councilwoman Aeh stated that she was against the \$6,000 mentioned in Section V and moved to amend it to \$3,000.

The role was called. VOTE: 4 ayes – 2 nays (K. W. Johnson, K.E. Johnson), the Ordinance was amended.

Councilman Kevin W. Johnson motioned that the amended Ordinance be passed.

There were no further questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **first reading**, to an Ordinance to amend the Salary Ordinance as amended by Ordinance No. 20 of 2016 to create the position of assistant to the city manager with an associated salary range of \$23,251 - \$38,829 per annum, to reflect wage and longevity increases for non-union employees, to reflect wage increases for FOP Lodge 33, FOP/Ohio Labor Council Dispatchers Unit, AFSCME 1039C, AFSCME 1039 and Local 512 International Association of Firefighters as a result of recent negotiated contracts to be effective January 1, 2017, to prohibit the Solicitor from coverage under the City's healthcare plans and to change the form of compensation to the Solicitor to include the city's family plan premium as compensation for calendar years 2018 and 2019 in lieu of raises in order to comply with Ohio Ethics Commission Advisory Opinions 91-008 and 92-016, and to repeal Ordinance No. 20 of 2016.

Councilman Kevin W. Johnson motioned that the three reading rule be suspended.

The role was called. VOTE: 6 ayes – 0 nays, the rules were waived.

Councilman Kevin W. Johnson motioned that the Ordinance be passed.

Auditor Williams requested an updated copy of the ordinance. Mayor Kalb ask Solicitor Haas to explain the reasoning for receiving premiums. He said in doing some research he come across a 1991 Ohio Ethics Commission opinion with a question posed that ask if certain city officials could take a raise in term (during their elected term) and specific to this city, Council members cannot take a raise in term because they vote on a raise and they cannot vote themselves a raise. The Auditor could take a raise because he doesn't vote on the raise and would be permitted to take a raise but for some reason the Ethics Commission decided that Law Directors or Solicitors were not permitted to take the raise during their term and he happen to be in the middle of his term and allegedly they have influence over members of Council (laughter) and he didn't necessarily agree with the reasoning or decision. He called the ethics commission to see if the opinion had been reversed and he received a written reply that stated it was still the rule. He also went to the Ohio Municipal Attorneys Association meeting and ask the Director of the Municipal Lawyers Association and his reply was that it could not be taken and it couldn't be taken even if it was voted on before the primary election. He said the advisory board also sent to him another case because his health insurance premiums, deductibles and out of pocket expenses were increasing and he wasn't getting a raise and he would be experiencing a pay cut and in 92-016 that said that it was alright for the Solicitor or Law Director to take what the city would be paying as a premium for the health insurance as compensation because it doesn't change his overall compensation and they treat the health insurance as compensation. He said that he would be prohibited in taking the city insurance which would allow him to go on the exchange to see what he could find at a better or different rate and this would comply with the Ethics Commission. Mayor Kalb ask what the difference was between a statutory city and a charter city because in the request to the Ethics Commission "statutory city" was referenced and we're a charter city. Solicitor Haas stated that there was no difference with regard to ethics. He said there was another opinion that he had shared with Councilwoman Aeh that basically said that ethics trump and a Charter cannot make something that's unethical ethical. Councilman Meadows stated that he would like a copy of that opinion. Mr. Meadows said that if Council would decide to raise the salary of the Solicitor and Auditor we would have a year and a half to complete the raise. Solicitor Haas suggested to go ahead and pass the raise, leaving it that the Solicitor gets the raise so that it would accumulate in 2018 and 2019 and whoever the next Solicitor is, they would come in at the same level as the Auditor. Councilwoman Aeh ask about the retro pay and Mr. Haas stated that he does not get

Ord. #73-2017
 Amending
 Section 169.10
 Health
 Insurance
 Premiums

Ord. #74-
 2017
 Salary
 Ordinance
 2017

it. Auditor Williams ask how the compensation would be paid and Solicitor Haas stated it would be like wages; the increase in premium for the insurance would be paid like its wages so his wages would increase. Auditor Williams ask if the ordinance wage range was correct and would it allow for a payroll payment to him. Solicitor Haas said “yes” and he would do a payroll change form that would fall within the range of what was in the ordinance. Auditor Williams said the insurance was approximately \$25,000 and that would be over and above the wage range which was \$52,000 - \$57,000, Mr. Haas replied that the number was supposed to change and it needed to be amended. Manager Allen stated the amount for insurance was \$25,817.28. Mayor Kalb stated that the amendment would be to raise the range to allow for the payment of the health insurance. Solicitor Haas said that was correct and he would also be taxed on that amount and people with the health insurance were not taxed. Mayor Kalb said that the range would be increase for only years 2018 and 2019 and Solicitor Haas stated that it would decrease back down in 2020 to equal out to what the non-union raises equaled. Councilman Kevin E. Johnson reiterated what had been said which was that Solicitor Haas would not be taking the health insurance through the city but would be paid \$25,000 as compensation for not taking the insurance. Councilman Meadows stated that the Solicitor’s position was underpaid and it should be receiving a higher pay because of the time demands that the position required. Solicitor ask that the high range amount be amended to \$80,000 in case the premiums increase next year.

Councilman Kevin W. Johnson motioned to amend the high range to \$80,000 for years 2018 and 2019.

The role was called. VOTE: 6 ayes – 0 nays, the Ordinance was amended.

Councilman Kevin W. Johnson motioned that the amended Ordinance be passed.

Councilman Kevin E. Johnson said for transparency purposes, Solicitor was not getting a \$25,000 raise. Mr. Haas will not be taking the city health insurance and would not be insured through the city and had to insure his family somewhere else. Solicitor Haas stated that if something happened and there was another Solicitor the Ordinance could be amended.

There were no further questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **first reading**, to an ordinance approving and ratifying the recently negotiated collective bargaining agreement between the City of Portsmouth and Local 512, International Association of Firefighters, for the period beginning January 1, 2017 through December 31, 2019.

Councilman Kevin W. Johnson motioned that the three reading rule be suspended.

The role was called. VOTE: 6 ayes – 0 nays, the rules were waived.

Councilman Kevin W. Johnson motioned that the Ordinance be passed.

Auditor Williams stated that the retro amount was a huge amount of pension calculation on a retro for the fire department with all the different funding mechanism, Kelly days, overtime, and there was no possible way with 5-6 days left in the year that it would be paid retroactively this year nor does it need to be because he’s experienced in the past that it’s only based and reported on the months that you earn it and not when it’s paid. He said that when it is paid January or February of 2018 as far as the retro the rate would take effect and they report it by the month and then it’s put on the fire fighters pension as to when they’ve earned it. Their January earning at an increase amount would count towards their pension in those months that they actually earned it regardless of whether Council passed it tonight. He advised that he had checked with the Ohio Pension Board and received a written opinion that the city would be alright. Mayor Kalb reiterated that their money would be counted as 2017 money except for taxable income which would show up on 2018. Mr. Williams stated that IRS was different than pension.

There were no further questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **first reading**, to an ordinance authorizing the appropriation and transfer of \$50,000 from Building Reserve Fund No. 103 to General Fund No. 101 and repealing Ord. #2017-005.

Councilman Kevin W. Johnson motioned that the three reading rule be suspended.

The role was called. VOTE: 6 ayes – 0 nays, the rules were waived.

Ord. #75-2017
 Ratified Local
 512
 Firefighters
 contract

Ord. #76-2017
 Appropriate
 and transfer
 funds from
 Buildings
 reserve 103 to
 General Fund
 101

Councilman Kevin W. Johnson motioned that the Ordinance be passed.

There were no questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **first reading**, to an ordinance authorizing the appropriation and transfer of funds for fiscal year 2017 as an emergency pursuant to Council Rule 5 and in accordance with Section 10 of the Charter of the City of Portsmouth in order to facilitate administration and operations and to avoid practical and/or legal entanglements.

Councilman Kevin W. Johnson motioned that the three reading rule be suspended.

The role was called. VOTE: 6 ayes – 0 nays, the rules were waived.

Councilman Kevin W. Johnson motioned that the Ordinance be passed.

There were no questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **first reading**, to an ordinance to make appropriation for the current expenses and other expenditures of the City of Portsmouth, Ohio beginning January 1, 2018 and ending December 31, 2018, as provided for in Section 49 of the Charter of the City of Portsmouth, Ohio.

Councilman Kevin W. Johnson motioned that this constitute a first reading.

Auditor Williams stated that this was the appropriation ordinance for 2018 and the next one was the capital improvement ordinance and the third one was a temporary two month ordinance should Council not approved the first two ordinances.

Councilwoman Aeh ask about the General Fund budget under building maintenance, one position was listed as crew leader and the salary was raised 18% and she could not find in the AFSCME contract where an additional 15% increase was approved to any position. There was never a vote from Council for anyone to have an additional raise other than what was stated in the AFSCME contract and this position went from \$31,034 and in 2017 it went to \$36,632.80 for 2018. This would be in the regular appropriations and the two month budget and if either one was approved we would be approving it for at least those two month and there was never an ordinance that authorized the increase. Manager Allen stated that because we have had so many problems in this building, the custodian has almost turned into a project manager because he was supervising the contractors and the repairs of the building. He referred to Mr. Smith's (Health Commissioner) comment about the amount of buildings that had been boarded up and properties that had been cleaned up, the custodian was one of the employees helping with that project and his job duties have changed so much that he (Manager Allen) increased that from Utility Worker/Truck Driver to a Crew Leader. Mrs. Aeh stated that there were only three divisions that have a crew leader and that would be up to Council to make the determination to add more positions not the City Manager. She stated that there was a Crew Leader in the Service Department/Grounds Maintenance, Water Distribution, and Sanitary, there were no other Crew Leaders approved by Council, nor was Council ever ask to increase that position for that amount of money or to add the position of Crew Leader to the Engineering Department. This employee is a Union employee and it wasn't in the contract. Mayor Kalb stated that it was a Union position and should have went through the bidding process. Solicitor Haas ask Manager Allen if it had been grieved and he replied that it had not been grieved. Mrs. Aeh ask if anyone else knew about it, Mr. Allen said there were no secrets in this city (laughter, couldn't hear). Mrs. Aeh said it still needed to be approved by City Council. Mr. Allen ask Mrs. Aeh if she wanted him to cut the employees pay and she replied that she wanted him to get paid what the contract says that position got paid. She said that the employee had received the increase up to this point and it should be returned to the city and she recommended that it come from the City Manager's bond. Mr. Allen ask Council if they wanted the custodian to continue to board up houses and Mrs. Aeh replied that it was the City Manager's job to assign duties. Councilman Kevin W. Johnson ask for legislation to create the position of Crew Leader in Engineering and Mrs. Aeh said there was only three people in Engineering and that there was no crew. Manager Allen said that he never dreamed that Council would be upset that someone was taking initiative to go board up houses and cleanup properties. Councilman Meadows stated that he didn't believe that people were upset that someone was taking the initiative and doing a job, but we need an ordinance creating the position. Councilman Kevin W. Johnson said that he was in full support of the custodian getting the raise. Mayor Kalb said this wasn't something that could be fixed tonight but they've had a first reading. Councilman Kevin W. Johnson said we have two more readings and Council should allow the City Manager to come back with a potential solution for that position.

Auditor Williams pointed out that the current budget was based on a 9% wage increase instead of the 10% wage increase and the numbers would be off. There will be at least 1% in salaries across the board for non-union employees but there are also other benefits that need to be considered.

There were no further questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, a first reading was declared.**

The clerk gave a **first reading**, to an ordinance approving the 2018 Capital Improvement Program budget and appropriating funds for same from Capital Improvements Funds Fund No. 301 for listed items only.

Councilman Kevin W. Johnson asked Manager Allen if this needed to be passed tonight and Manager Allen stated that he would like to order new Police cars.

Councilman Kevin W. Johnson motioned that the three reading rule be suspended.

The role was called. VOTE: 3 ayes – 3 nays (G. Meadows, T. Lowe, J. Kalb), the rule was not suspended.

Councilman Kevin W. Johnson motioned that this constitute a first reading.

Mayor Kalb stated that his vote was based on questions that he had which had not yet been answered. Councilman Meadows added that this was a multimillion dollar budget and the citizens need the opportunity to speak on the issue.

There were no further questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, a first reading was declared.**

The clerk gave a **first reading**, to an ordinance to make appropriations necessary for the current expenses of the City of Portsmouth, Ohio for the months of January and February 2018 as provided for in Section 50 of the Charter of the City of Portsmouth, Ohio.

Councilman Kevin W. Johnson motioned that this constitute a first reading.

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

The clerk gave a **first reading**, to an ordinance authorizing the transfer of \$142,000.00 from General Fund No. 101 to Health Department Subsidy Fund 250.458 in order to process the ten percent (10%) raise for non-union employees for the period beginning January 1, 2017 through December 31, 2017 with retroactive pay to be paid to the non-union employees by December 31, 2017.

Councilman Kevin W. Johnson motioned that the three reading rule be suspended.

The role was called. VOTE: 6 ayes – 0 nays, the rules were waived.

Councilman Kevin W. Johnson motioned that the Ordinance be passed.

Councilman Kevin W. Johnson stated that he appreciated hearing an update on the monies spent in the Health Department. Auditor Williams stated that it cannot happen by December 31, 2017, it is an extreme amount. He said if it were just a matter of cutting a check for whatever amount, it would be simple, but to calculate every hour that they've worked and figure out whether it's a Kelly Day or overtime or acting pay and figuring out which ones were pensionable and which ones were not, it is an extreme amount of work on the department as well as our payroll people and there's not enough time left in the year. He said the good thing was that it didn't have to be done for pension purposes but that they would do it as quickly as possible. Mayor Kalb ask Solicitor Haas if it would be wise to amend the ordinance and he was advised to amend and strike the December 31, 2017 date and put a period after the word employees.

Councilwoman Aeh motioned to amend the ordinance by striking December 31, 2017 and putting a period after employees throughout the ordinance.

The role was called. VOTE: 6 ayes – 0 nays, the ordinance was amended.

Councilman Kevin W. Johnson moved that the amended ordinance be passed.

**Ord. #78-2017
 10% raise to
 Health
 Department**

Auditor Williams stated that there were a lot of details that went into the details of the ordinance especially payroll and budgetary issues. He also needs the ordinance amended to include “authorizing the **fund transfer and appropriations**. He said any time a fund transfer was done he needed the wording for appropriations added also and if this was passed it would be carried over into 2018 throughout the ordinance.

Councilman Kevin W. Johnson motioned to amend the ordinance to include “authorizing the **fund transfer and appropriations**” throughout the ordinance

The role was called. VOTE: 6 ayes – 0 nays, the ordinance was amended.

Auditor Williams also recommended instead of stopping where we eliminated the date and put a period after employee to include “and carried over into the next year” Solicitor Haas stated that he didn’t believe that could be done but it could be done after the year but looking forward it cannot be appropriated. It should be done in 2018 that the money wasn’t spent and needed to be carried over but it could not be done ahead of time. Auditor Williams said it would have to be encumbered by a purchase order. Mayor Kalb stated that this was a special circumstance. Mr. Johnson ask for the language to be repeated “and carried over into 2018”. Solicitor objected to the amendment.

The role was called. VOTE: 6 ayes – 0 nays, the ordinance was amended.

Councilman Kevin W. Johnson motioned that the amended ordinance be passed.

There were no further questions or comments. **The role was called. VOTE: 6 ayes – 0 nays, the Ordinance was passed.**

STATEMENTS OR REMARKS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Marvin Johnson – 2121 Robinson Avenue – He passed around a summary of items (the clerk did not receive one). He said that on the list were some of the things that the city was doing and not very well. He said we have a Planning Commission and all of the new construction going on and a lot of them have no landscape, the theatre district had no markings on the road and landscaping was something that these companies could add to the contract and the city would be a more livable place and would cost the city absolutely nothing. He gave some examples of what could be done. He said there was a fire plug moved but the city left a big dip in the sidewalk and when it rains the water goes all the way out into the first lane of traffic, there was also mud present after the rain. A house at 1211 Cole Street was torn down which made a blighted area look a lot better, however there was debris on the city lot that was still there; this was an instance where the workers should have put the trash in the dumpster when they were there. He said there was another lot that was being sold at Cole and Robinson and the dirt was creeping out onto the sidewalk. He also brought up about the garbage men not putting the trash cans back where they belong, and all it would take would be a note to the driver and the guy that picks up the trash. He added that these things help the city look better all over and to make sure that the people that own these properties take care of them.

Lee Scott – 1828 Summit Street – He thanked the Health Department because his house was on the tear down list and he had rebuilt the house and it was one of the finer houses in Portsmouth and a historical landmark for the area. He watched on WSAZ when they had a shooting at the Columbia Bar and they reported that there had been 70 plus complaints and found it interesting that they’ve never received one call from the Chief of Police. Mr. Scott had contacted the Chief with concerns he had about drug dealing in his building and he never had received a response. He contacted the Police Department about bad narcotics that he knew was in town only to have the drug dealer pull up and confront him (Scott) about informing on him (the drug dealer). He felt that the Columbia has been targeted since day one and was assured at a Council meeting several years ago that there would be no problem for them to receive the Revolving Loan Fund to rebuild the Columbia again since they had used it once before. He had applied for it but was denied because the money had been used elsewhere, so they had to open the Columbia as a bar and keep track to show it was making money. During a couple of years, he felt they had been targeted because someone was shot last week beside his building; they had closed the bar for a short time but they have re-opened and now provide free security at all times since he knew that he couldn’t get any help from the Police Department. He was angry and had been talking about putting the charter on the ballot to remove the charter from the City of Portsmouth. The Charter insures the Police Department their jobs and they’ve had at least 8-9 Police cruisers sat beside their building and some of them were sitting there the night of the shooting but yet it took them 10 minutes to get there, he called 9-1-1 and the Fire Department and the calls were dropped from the Police Department and the Police never answered the call and it showed on his telephone the number of times he tried to call. He said it took 10 minutes for the car sitting beside of his building to respond to the call and another 10 minutes to get a Fire Ambulance (not a real ambulance) to his building. He felt that we had made a mistake by getting Fire Ambulances again because it didn’t work back in the 80’s.

Vina Colley – P.O. Box 136 Portsmouth, OH – She gave her credentials and thanked Kevin W. for putting together some pamphlets on the waste cell and she hoped that Council would consider putting the waste cell on the agenda. She ask about the \$300,000 for the brownfield sites and was concerned. She ask Manager Allen

about a dumpster for the homeless people, he replied that one could not be put back where they were located but that they put one a Bob & Floyd's that could be used.

Joseph Pratt – 1662 Grant Street – He said he was Councilman Kevin E. Johnson's neighbor and felt that the community watch was great. He added that every time he called the Portsmouth City Police they've been there within minutes.

Joni Fearing – P.O. Box 1917 Portsmouth, OH – She followed up on what Mrs. Colley spoke about regarding the Nuclear Plant in Piketon. Her father worked at the A-Plant from 1954-1964, they received the EEOICPA Award because her father had four cancers before he died. Her concern was for the employees and the residents. She said the funding that went into the trust when the A-Plant first opened was for the cleanup. There was tons of highly radioactive waste moved to dry storage in Nevada. They were trying to take down these contaminated buildings and bury them on site as opposed to moving it to a dry site. Piketon is a wet area with cracked and unstable bedrock. Any toxins left would make it very hard for other industry to come in to the area and on the residents. Chillicothe was also concerned and had a discussion at their City Council meeting.

Chief Rob Ware – 728 2nd Street – Portsmouth, OH – He rebutted what was told earlier as he refused to stand around and let his officers be bad mouthed by somebody that doesn't know what he was talking about. He said that in the Council packet there was information concerning the 800 block of Gallia Street. He said it was Council's prerogative whether or not they want to contest the liquor permits but he won't stand there and let him say that the Police aren't cooperating with him and that we're not doing anything. In 2016-2017 they received 74 complaints where officers showed up to his bar to handle criminal activity. They did 82 walk-throughs, they found marijuana smoke and made multiple arrests there and there was a fatal shooting there. The fatal shooting occurred with officers sitting outside the Columbia and Noggins which they did every Thursday, Friday and Saturday night since September and it was because of all of the trouble that occurs in those two bars and the complaints they had gotten from the residents and businesses. For him to say he doesn't know what's going on, he begged to differ with him. It had been verified that they did not receive any 9-1-1 calls the night of the shooting and the officers working the detail were alerted to the shooting by the people running out of the bar which was also on video and were inside the bar within 45 seconds which also was on video. He wanted to make sure that Council was hearing from him as the Chief of Police and not someone else.

Councilman Meadows made a motion to recess into Executive Session to consider the employment, dismissal, discipline, promotion, demotion or compensation of a Public Employee or Official.

The role was called and the motion carried: **VOTE: 6 ayes – 0 nays, Council recessed into Executive Session at 7:48 p.m.**

Executive
Session

Councilman Meadows moved that Council reconvene from Executive Session.

The roll was called and the motion carried. **VOTE: ayes 6 – nays 0, Council reconvened with all still in attendance at 8:15 p.m.**

Councilman Meadows moved that Council take a 15 minute recess due to the length of the meeting.

The roll was called and the motion carried. **VOTE: ayes 6 – nays 0, Council recessed at 8:15 p.m. and will reconvene at 8:30 p.m.**

Councilman Meadows moved that Council reconvene from the recess.

The roll was called and the motion carried. **VOTE: ayes 6 – nays 0, Council reconvened with all still in attendance at 8:32 p.m.**

Councilman Meadows moved that Council recess into Executive Session to continue to discuss the related matters as stated previously and reserved the right to call in the City Manager at a later time.

Executive
Session

The role was called and the motion carried: **VOTE: 6 ayes – 0 nays, Council recessed into Executive Session at 8:34 p.m.**

Councilman Meadows moved that Council reconvene from Executive Session.

The roll was called and the motion carried. **VOTE: ayes 6 – nays 0, Council reconvened with all still in attendance at 9:12 p.m. with the exception of Auditor Williams.**

Councilman Meadows stated that based upon their Executive Session, he moved for the termination of City Manager Allen based upon the following:

1. Act of Nonfeasance which was the failure to perform an act that are required by law, the City Manager has the ability to enter into a Memorandum of Understanding during Union contracts and City Council obtained a copy of a hand written Memorandum of Understanding with Derek Allen's signature located on the same agreeing to give AFSCME 1039C members a two dollar (\$2.00) an hour raise effective January 1, 2018. City Council must approve all expenditures for the City of Portsmouth. This expenditure has never been brought before City Council for approval. City Council did ratify the contract for AFSCME 1039 C which granted a raise to the members comparable to that

of other bargaining units; however, there was never a ratification of the additional expenditure of the memorandum of understanding. Derek Allen's signature and agreement to make an unapproved expenditure is an act of nonfeasance subject to discipline as stated in the City Manager's Employment Agreement Section 10. He stated that there was an attachment to the Memorandum.

2. The City Manager has also created a position titled Crew Leader in the Engineering Department and given the affected employee a raise for the created position. The City Manager does not have the ability to create job positions and approve the expenditure for the additional salary given to the employee serving in the unauthorized position. By creating this position and giving the additional pay without the approval of the City Council, Derek Allen has committed an act of nonfeasance subject to discipline as stated in the City Manager's Employment Agreement Section 10.
3. Malfeasance is the commission of an illegal act. The City Manager has used physical violence and has physically struck an employee on two different occasions. The act of physical violence is an assault in violation of ORC 2903.13. There is no reason for the City Manager to physically assault any employee. By physically assaulting the employee, Derek Allen has committed an unlawful act and is subject to discipline as stated in the City Manager's Employment Agreement Section 10.
4. Misfeasance is the wrongful exercise of lawful authority. One example is that on October 9, 2017 the City Manager came to City Council (Mayor Kalb gaveled and asked Solicitor Haas if this did not interest him and Solicitor Haas said "no" and Mayor Kalb told him he could be excused and Solicitor Haas stated that he would stay and that he could do two things at once) and advised that there was a bid proposal to Southern Ohio Port Authority (hereinafter SOPA) for demolition and asbestos abatement at the Adelphia site currently owned by the City. The abatement is necessary to allow the building to be sold for a potential development in the city. During the October 9, 2017 Conference Agenda, the City Manager told City Council that he did not think that the bid would be honored due to the issues with SOPA. The original bid for the abatement was \$49,000. Since the City Manager did not think the bid would be honored he asked for an allocation of \$75,000. The City Manager was asked if he had contacted the contractor and he replied that he had not. At the October 23, 2017 Council meeting the ordinance was brought to the Council floor to be voted on and after waiving the three reading rule for the ordinance, the ordinance allocating \$75,000 was passed. The City Manager had maintained that he did not think the contractor would honor the contract. On November 10, 2017, Council members received a copy of the email from the contractor who proposed the \$49,000 bid and was advised that he had contacted the City Manager on October 11, 2017 and told him he would abide by the bid he quoted to SOPA. (A copy of the email was attached). The City Manager was aware that he did not need the allocation of \$75,000 on October 23, 2017; however, he remained silent about the contractor's email in order to get an allocation for \$75,000, despite the fact that he knew the bid of \$49,000 would be honored. Not only did Derek Allen fail to communicate with City Council by failing to disclose the existence of the email honoring the original bid, the City Manager was dishonest because he was again asked if he had contact with the contractor regarding honoring the bid at which time he claimed that he did not believe the bid would be honored. The City Manager does have the legal authority to enter into contracts, but not by withholding important information that is pertinent to the contract that Council must approve. Derek Allen's failure to properly communicate with the City Council and the dishonesty subjects him to discipline as stated in the City Manager's Employment Agreement Section 10. The above situation is only one example of poor communication between the City Manager and City Council.
5. The City Manager has failed to properly keep Council members informed of matters that they should be aware of. Some other acts of failure to properly communicate include but are not limited to: The City Manager was recently absent from his position for a week to attend an economic development training seminar in Florida. He failed to share with City Council that he would be gone for that week.

He did not share information that two city employees were fired for theft and that he had rehired one of them, possibly subjecting the City to litigation.

He also failed to share with Council that two other employees had been fired for violating the workplace rules. Both employees' charges for firing were the same but one was rehired, again subjecting the City to possible litigation. Although the Charter states that "Council is not to interfere with employee matters", these issues involved financial losses and possible monetary expenditures and litigation of which Council should be made aware.

In spite of numerous and repeated requests for information regarding union contract negotiations, the City Manager failed/refused to share any of the proposed changes while negotiating. In most cases City Council was forced to either ratify or reject the proposed contract with little or no time to review and discuss the changes, sometimes as late as the day of the vote.

6. The City Manager has on many occasions violated the Portsmouth City Charter. Examples of those incidents include:

When absent from his position the City Manager has on several occasions, appointed the Solicitor (Director of Law) to assume his duties. Section 30 of the Charter clearly state that "the City Manager may designate, by letter to the City Clerk, any qualified administrative officer of the City to perform his/her duties during temporary absence or disability". Also, Section 37 of the Charter reads in part; "but the Department of Law shall not thus be joined with any other department or office".

The City Manager has on different occasions encouraged citizens and/or city employees to support the removal of certain Council members (his employers) from office. Section 81 of the City Charter clearly stated in part; "no person in the administrative service of the City shall use his official authority to influence or coerce the political action of any person or body or to interfere with any nomination or election to public office". (If a public hearing should become necessary, details and sworn statement can be provided).

7. Additional issues to note are:

It has been reported by a female employee, after said employee ended a relationship that the City Manager told the employee that “it will be difficult for her to find a new relationship with the two pieces of baggage she had”. The employee believed this was a reference to her children. This type of behavior is disrespectful towards an employee of the City and displays disrespect or improper treatment of an employee which subject the City Manager to discipline in accordance with Section 10 of the City Manager’s Employment Agreement.

Another employee has reported that the City Manager had a list of the city’s ten highest health insurance claims for the year and told the employee that the top ten employees who file claims for benefits under the health insurance needed to be fired. It is alleged that the City Manager told the employee that said employee was number two on the list. This action is not only discriminatory but can violate the confidentiality of which these employees are entitled. Disrespect or improper treatment of City employees is in violation of the City Manager’s Employment Agreement Section 10 and subject to discipline.

The City Manager has retaliated against an employee for coming forward to a member of City Council to report issues with the City Manager. The City Manager has reduced the duties and taken away job responsibilities of said employee. The employee in question is no longer working on the grants sought by the City. This job duty has been taken from said employee and given to the newly hired assistant to the City Manager. It was reported that the City Manager asked the employee if the employee sold him out for \$1,000. This retaliation by the City Manager against an employee who reported a concern to the supervisors of the City Manager is a serious failure of good behavior subjecting the City of Portsmouth to liability and subjects Derek Allen to discipline pursuant to the City Manager’s Employment Agreement Section 10.

All of the aforementioned acts are serious violations of the City Manager’s Employment Agreement with the City of Portsmouth. Most of the incidents are violations of law and also considered as acts of insubordination, insolence and/or total disrespect for the authority of city employees.

The City Manager does not have a good working relationship with his employees or his employers.

The overall scores of his annual evaluations have continually dropped.

The aforementioned actions, as well as others not yet listed, of the City Manager are improper, unacceptable and shed a bad light on the City of Portsmouth, and violate the Employment Agreement between Derek Allen and the City of Portsmouth as well as possibly placing the City in a position to answer possible litigation. The names of the employees and other people involved have been withheld from the document for fear of further retaliation. Each employee referenced herein has affirmed the willingness to testify at a public hearing if necessary.

Mayor Kalb stated that the allegations were precluded by a motion for Mr. Allen’s removal.

Councilman Meadows stated that the motion for termination was made first and he will attach the email regarding the Adelphia Building and the handwritten Memorandum of Understanding and give those to the City Clerk as part of the record.

Councilman Kevin W. Johnson stated that he made his position very clear in Executive Session.

There were no further questions or comments. **The role was called. VOTE: 4 ayes – 2 nays (K. W. Johnson and K.E. Johnson), the City Manager was terminated.**

Mayor Kalb asked Chief Ware to escort Manager Allen to his office to get his personal things and retrieve city keys, city cellphone and all property of the city. Mayor Kalb explained to Mr. Allen that he had every intention of going a different way until his actions during Executive Session.

MISCELLANEOUS BUSINESS AND REPORTS:

City Clerk’s Report – City Clerk Ratliff reported the following:

1. She received an Oath of Office for the following:
 - a. Emily Potts – Police Officer
 - b. Aaron Broughton – Police Officer
2. She received a receipt from the Auditor’s office for the franchise fee from Charter Communications in the amount of \$58,764.58. For some reason the Auditor’s office deposited the check before letting her do a Daily Pay-In Sheet and making a copy of the check.
3. She received copies of the updated codified ordinances and once the changes have been confirmed it will be forwarded to the City Manager’s office to put on the City Manager Agenda.
4. She received a Resolution from the Scioto County Commissioners for the Indigent Representation Agreement and have forwarded a copy to Solicitor Haas and Manager Allen.
5. She requested vacation time for Friday December 22nd, Wed the 27th, Thurs 28th and Friday 29th. She requested that the balance of her vacation time 16 hours be rolled into 2018.

6. She stated that it had been an honor and pleasure to work with Councilman Kevin W. Johnson and that he would be truly missed.
7. She received via email on December 4, 2017 from the Auditor's office, the following summary of the Combined MTD/YTD reports for the end of November 30, 2017: Expense, Revenue and Fund.

The City Clerk's report was received, filed and made part of the record, on a motion by Councilman Kevin E. Johnson. The motion carried viva voce: **VOTE: 6 ayes – 0 nays.**

City Manager's Report –

A written report can be found on the city's website: www.portsmouthhoh.org

Mayor's Report – Mayor Kalb reported the following:

1. He said that he and Councilman Kevin W. Johnson had been on Council for a few years together and they've had their disagreements and that he had been an asset to Council and he will be missed.
2. He thanked JoAnn for bringing in snacks for tonight.
3. They've been informed by Solicitor Haas that they need to have another meeting during December and it was determined to meet on Thursday December 21, 2017 in Council Chambers at 6:00 p.m.

Chief Bill Raison re-entered the doorway while Council was in session and spoke without being recognized and said "What a ridiculous thing that has happened here tonight. He has been with the city for 27 years and the city was in better shape than he's ever seen it and you just fired the man responsible."

Councilman Lowe mentioned that Council could fire him too and Councilman Meadows quickly corrected by saying that Council could not fire the Fire Chief.

The Mayor's report was received, filed and made part of the record, on a motion by Councilman Kevin E. Johnson. The motion carried viva voce: **VOTE: 6 ayes – 0 nays.**

City Solicitor – Solicitor Haas reported the following:

1. He stated that he was speechless.

Auditor Williams – Auditor Williams had a written report as follows:

1. November's General Fund \$1,078,450 and last years was \$948,735 and the new tax revenue collected was \$244,893. Total collection included in both General and Capital was \$1,225,550 and last year was \$1,003,185. Major Fund Balances – General Fund \$4,585,498, Streets \$371,820, Water \$450,814, Sewer -\$1,182,294, Sanitation \$586,745 and Insurance \$1,486,973.

The Auditor's report was received, filed and made part of the record, on a motion by Councilman Kevin E. Johnson. The motion carried viva voce: **VOTE: 6 ayes – 0 nays.**

MISCELLANEOUS BUSINESS FROM CITY COUNCIL

6th Ward – Councilman Lowe reported the following:

1. He received a complaint about K & K Carpet running a business out of a residential area. He plans on meeting with the neighborhood to check it out.
2. He said there was an abandoned van on Gallia Street that he called about a month ago to get it towed away, however it was still sitting there.

5th Ward – Councilman Meadows had no report.

4th Ward – Councilman Kalb had no report.

3rd Ward – Councilman Kevin E. Johnson reported the following:

1. He expressed what an honor it was to work with Councilman Kevin W. Johnson. He said that he helped him from the onset and appreciated his friendship and learning from him. He made things better in the city and thanked him for his service and his work.

2nd Ward – Councilwoman Aeh reported the following:

1. She got lots of complaint calls regarding the Columbia Theatre bar and Noggins which are in the 2nd Ward. Complaints about disturbing the peace and the activities that had been going on there. She explained what her advice was to them which was the process was for the Police Chief to request a Resolution from Council based on the calls and complaints that they have received.
2. She said she was looking forward to sitting next to Councilman Kevin W. Johnson one more time.

1st Ward – Councilman Kevin W. Johnson reported the following:

1. He stated that he was disappointed that they couldn't get the Resolution added because that wasn't the final decision because it would be up to the State. The city would just be communicating that we have some problems with these bars and the State would then turnaround

- and tell them to get their act together and track them on how they feel. He said the Business owners are down there after every weekend having to clean up vomit, broken glass and the parking lot was a mess. He didn't understand why Council wouldn't allow that resolution.
2. He wanted to speak to Mr. Haas regarding the Charter Review Committee because they had finished their job in September and he was very upset that their report had not been finished. He started that process and introduced the legislation and it had been months since they had completed their review and it still had not been presented to Council. He said there were some things they want to recommend that concerned him and stuff that they didn't recommend that also disturbed him because it contradicted some of the stuff they were recommending. He said that they don't want to repeat what the previous Charter Committee did by not taking action and all of these should go to the voters based on our recommendation. He said that he would like a copy of the report when it was completed.
 3. He said that the Chillicothe City Council had a formal hearing regarding the Piketon issue and invited the public and experts and allowed 15 minutes of pros and cons and then 5 minutes for rebuttal from both sides and then public input. Chillicothe had not yet made the decision but from what he was hearing they weren't impressed with the Governments presentation. He also had documentation that he had collected and it had been scanned and was available should anyone want it. He said next year he hoped Council would conduct a hearing because there were some serious issues. There's a similar nuclear waste site with multiple cells outside of Oakridge, TN and he had documentation from the Tennessee EPA that the site was leaking mercury and this was a site that was supposed to last 1,000 years.
 4. He thanked everyone and he has enjoyed being with each person on Council and even though they have had disagreements, he leaves very proud of all the legislation that he had introduced.

The meeting adjourned at approximately 9:40 p.m. on a motion by Councilman Kevin W. Johnson.

City Clerk

Mayor