

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

Monday December 22, 2014

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on Monday December 22, 2014 at 6:00 p.m., in the Council Chambers of the Municipal Building.

Acting Mayor Jim 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
Rich Saddler	2 nd Ward
Kevin E. Johnson	3 rd Ward
Jim Kalb	4 th Ward
Gene Meadows	5 th Ward
Jeff Kleha	6 th Ward (Absent)

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

Councilman Kleha absence was excused on a motion by Councilman Kevin E. Johnson, the motion carried viva voce: **VOTE: ayes 5 – nays 0**

Council dispensed with the reading of the Journal for the special session of December 6, 2014 and the regular session of December 8, 2014 on a motion by Councilman Kevin E. Johnson.

Councilman Kevin W. Johnson motioned to add a Resolution to the Agenda as “7e” regarding the City’s Income Tax and move the other two legislative items down as “7f and 7g”, the motion carried viva voce: **VOTE: ayes 5 – nays 0**

**Added item
to Agenda**

Auditor Williams made Council aware that the items he passed around were the corrections to the Operations Ordinance and the Capital Improvement Ordinance and that the items would need to be amended before passage.

There was no Public Hearing.

STATEMENTS OR REMARKS FROM CITIZENS ON ITEMS ON THE AGENDA

There was no one present who wished to address Council on items on the agenda.

LEGISLATION

The clerk gave a **second reading**, an Ordinance to make appropriation for the current expenses and other expenditures of the City of Portsmouth, Ohio beginning January 1, 2015 and ending December 31, 2015, as provided for in Section 49 of the Charter of the City of Portsmouth, Ohio. Now, therefore,

Councilman Kevin W. Johnson motioned that this constitute a second reading and motioned to amend with the changes submitted by the City Auditor as follows:

Fund 101 111 Municipal Court
Funds 201 through 207 and at the next meeting 208 will need amended
Funds 219, 220, 241, 250, 252, 264, 270, 620

The role was called. **VOTE: 5 ayes – 0 nays, the legislation was amended.**

Councilman Kevin W. Johnson motioned that the amended legislation constitute a second reading.

There were no questions or comments. The role was called. **VOTE: 5 ayes – 0 nays, a second reading was declared.**

The clerk gave a **first reading**, an Ordinance authorizing a contract with Howerton Engineering and Surveying in the amount of \$126,600 and with AMEC Environment and Infrastructure in the amount of \$10,000 to complete the certification of the Flood Defense System to be paid from Flood Defense Fund No. 265.

Councilman Kevin E. Johnson motioned to waive the three readings due to a time restriction that had come to light.

The role was called. **VOTE: 4 ayes – 1 nay (G. Meadows), the rule was suspended.**

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

Councilman Meadows asked why the three reading rule was suspended. Solicitor Haas stated that Mr. Duncan came to his office and explained that FEMA called requesting an update on the project and he explained that we were having the first reading but they requested that it be expedited as the process had to be completed in 120 days and New Boston had been completed for quite some time. Acting Mayor Kalb stated that this was something that had been discussed and Mr. Duncan had explained in great length. Councilman Meadows stated that he understood but still believed that the citizens are entitled to an explanation as to why we are suspending the readings.

Ord. #54-14
 Certification
 of the Flood
 Defense
 System

There were no questions or comments. The role was called. **VOTE: 5 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **first reading**, an Ordinance authorizing the City Manager of the City of Portsmouth, Ohio to advertise for bids and to enter into contracts with the lowest and/or best bidder for required supplies, materials and services for 2015 in accordance with Ohio Revised Code section 735.05. Consent Agenda

Councilman Kevin W. Johnson moved to waive the three readings as it is a consent agenda item.

The role was called. **VOTE: 4 ayes – 1 nay (G. Meadows), the rule was suspended.**

Ord. #55-14
 Advertise for
 bids and
 enter into
 contracts

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

Councilman Meadows stated that he's not against the Ordinance but is not comfortable suspending the three reading unless it was an absolute emergency. Councilman Kevin W. Johnson stated that it had been discussed during the Conference Agenda along with the reason it needed brought forward as a Consent Agenda. Acting Mayor Kalb reiterated that it was written and also listed as a Consent Agenda item when it was discussed and was something that's done every year. Manager Allen stated that for 2016, the legislation will be submitted early enough to avoid having it be a consent agenda as he was not aware this year that it had to be done.

There were no questions or comments. The role was called. **VOTE: 5 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **first reading**, to an Ordinance approving the 2015 Capital Improvement Program budget and appropriating funds for same from Capital Improvements Funds Fund No. 301 for listed items only. Now, therefore,

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

Manager Allen stated there were some changes and the legislation would need to be amended. \$20,000 for a replacement vehicle, \$20,000 for MARCS radio system for law enforcement.

Councilman Kevin W. Johnson motioned to amend the Ordinance to reflect the changes that the City Manager proposed.

The role was called. **VOTE: 5 ayes 0 nays, the Ordinance was amended.**

Councilman Kevin W. Johnson motioned that the amended Ordinance constitute a first reading. He appreciated that the riverfront beautification, the downtown street signs and the turn lane for Scioto Trail at Kinneys Lane had been included as they had been needed for some time. Councilman Meadows stated that last year it was discussed that Main Street Portsmouth, Connex and other projects were to submit something in writing outlining what we were getting in return on our investments. Manager Allen stated that Main Street Portsmouth had already given a list of where the money was spent and they are doing a better job on reporting to us. None of the money was spent last year for Connex and is doubled this year. The money won't be going to Connex, the City will fund the project and when Connex has money they will supplement the City and the project will probably take an engineer to help figure out a plan of action. The money for the Riverfront beautification is for security cameras, fixing the lights and buying paint for the floodwall to cover the graffiti hopefully this will deter the graffiti under the bridge. Councilman Saddler asked if the paint would be the type of paint that can be power washed if it got covered in graffiti again and Mr. Allen replied that he hoped it was so that it can be maintained. ODOT gave the city the paint to match the paint on the bridge.

There were no questions or comments. The role was called. **VOTE: 5 ayes – 0 nays, a first reading was declared.**

The clerk gave a **first reading**, a Resolution recognizing that the City Manager has done all in his power to increase revenue and decrease unnecessary expenses and that such has been insufficient to bring the City's finances into sufficient order for even basic service purposes and therefore City Council shall submit to the voters of the City of Portsmouth a proposal to increase the city's income tax by 0.5%.

Solicitor Haas apologized to Councilman Kevin W. Johnson as somehow this didn't make it into Council's packets.

Councilman Kevin W. Johnson motioned that the Resolution be adopted.

City Manager Allen asked to see the Resolution since it mentions him. He reviewed it and stated that there was a discussion about 12 positions being eliminated but they are all not tied to the income tax, of those 12 positions, 5 or 6 should be tied to the income tax in the General Fund and the other 6 have to do with other departments. He doesn't have a problem with any of the other wording and added that there were no other areas to reduce other than laying people off or cutting take home pay which would basically be making employees pay more for their benefits.

Councilman Kevin W. Johnson moved to amend the Resolution and eliminate the wording regarding the 12 positions.

The role was called. **VOTE: 5 ayes – 0 nays, the Resolution was amended.**

Councilman Meadows stated that he understood about the financial issues and the State Auditors wanting an income tax increase put on the ballot, but he would like to have the assurance to tell the voters that we're currently collecting everything that is due the city and that any outstanding delinquent accounts are currently being collected. Auditor Williams stated that if there were any delinquencies the amount would be minimal and steps have been taken to be more accurate with collections, one of which was the mandatory filing that was passed earlier this year. Auditor Williams gave a preliminary answer as follows: He talked about the mandatory filing for many years the previous tax administrator had told him that his estimate on what was needed would be as much as \$200,000 that we would collect with the mandatory filing, but there's no way to know that and it was based on his experience. The amount outstanding right now would be less than that and if compared to this tax, we'll be bringing in \$3,000,000 in revenue.

Councilman Kevin E. Johnson stated that a lot of voters that have expressed concern to him about Department overtime and if it exist that maybe that would be a place to cut. Manager Allen stated that there was overtime in the General Fund activities, there was overtime which included the Fire Department; two kinds of overtime. One is built in overtime which would have to be addressed during negotiations, the second kind of overtime they had was minimum manning due to people being off which should be reduced in 2015 due to hiring additional firefighters. The Police Department he wasn't sure of but will get the report for 2014 on what the overtime looked like and that overtime would be due to staffing and covering for people who are off. The City had given out time off in lieu of pay raises and that actually does cost money because then you have to pay people overtime to cover the vacation. There was overtime in Dispatching because there are only 6 dispatchers. He will get Council a report on the overtime status. Last winter we had a lot of overtime in the water department due to the amount of water breaks that happened due to the cold weather.

**Res. #19-14
Proposed Tax
increase**

There were no questions or comments. The role was called. **VOTE: 5 ayes – 0 nays, the Resolution was adopted.**

The clerk gave a **first reading**, to an Ordinance submitting to the electors of the City of Portsmouth, Ohio, at the Primary Election to be held on the 5th day of May, 2015, a supplemental section to the Charter of the City of Portsmouth, Ohio to levy annually, beginning January 1, 2016, an income tax in an additional amount of five-tenths (5/10) of one percent (1%), notwithstanding any provision in Section 47-a prohibiting said tax, to provide funds for general municipal operations of the City of Portsmouth.

Councilman Kevin W. Johnson motioned that this constitute a first reading and moved to amend under section III on the second page of the legislation, paragraph 4 which begins as Shall the Charter of the City of Portsmouth, Ohio be amended as follows: after the word amended he would like to include the following words: "For the purpose of avoiding employee lay-offs, avoiding a potential fiscal emergency declaration by the State Auditor, establishing a sound fiscal structure for the city, provide for improved services and employee remuneration and establish the city as a sound investment for economic development as follows:" The purpose line allows and is important because many times this is the only thing voters will see about any ballot issue.

Solicitor Haas asked if he wanted to add language that would go to the voters, he answered yes. Solicitor Haas stated that he didn't realize the city had a plan for remuneration and asked if it were for raises? He answered that it was a purpose line only and doesn't project how the money will be used. Councilman Meadows stated that he's concerned about the language because as reflected in the past, when the government puts on a tax it usually never gets removed. For future reference, if the requested wording is used and the city is no longer in threat of lay-offs or fiscal emergency, will the city be bound to remove the tax, because if the purpose no longer exist and the tax is no longer needed. Councilman Meadows suggested a broader purpose such as "use in the General Fund" may be more appropriate. Acting Mayor Kalb stated that the requested language stated for the purpose of avoiding lay-offs and we cannot predict that in the future we won't need to have a lay-off and would that bind the city. He's not opposed to having a purpose included, but would like to have the Solicitor review the Resolution for a solution. Councilman Kevin W. Johnson withdrew his motion to amend for future review of the language.

There were no questions or comments. The role was called. **VOTE: 5 ayes – 0 nays, a first reading was declared.**

The clerk gave a **first reading**, to a Resolution to adopt the Cost Allocation Plan for the City of Portsmouth as per Exhibit A attached.

Councilman Kevin W. Johnson moved to adopt the Resolution.

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

**Res. #20-14
Cost
Allocation
Plan**

STATEMENTS OR REMARKS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Lee Scott - 936 9th Street – He stated that it was really good to be able to walk into Council meeting and not see the hallway with disgruntled people and to see real business taking place. Mr. Allen seems to have more support amongst the citizens than anyone he's seen in the entire history of his knowledge of Portsmouth and for the first time in many years people are happy with the direction that the current leadership.. He's pleased with the way things are going and thanked Mr. Allen for being a leader in our city and to let him know that he does have the support of the citizens.

MISCELLANEOUS BUSINESS AND REPORTS:

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

1. She received on December 16, 2014 a correction from the Ohio Division of Liquor Control of the correct street address for Ohio CVS Stores, LLC which is 802 11th Street, Portsmouth, Ohio. This was for informational purposes only.
2. She prepared Proclamation for the Salvation Army Kettle kick-off
3. She received a Legal Opinion regarding the City Manager's Evaluation from Solicitor Haas.
4. She wished everyone a very happy and safe holiday.

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

City Manager's Report – Manager Allen reported the following:

1. His written report can be found on the City's website.
2. Leaf pickup is still ongoing and they will all be collected before the season is over.
3. There have been pothole repairs including pothole repairs in the 6th Ward.
4. He noticed that some of the trenches on the Lawson Run project were rough from the stone coming out and they are milling out 6 inches of stone and putting in 6 inches of base as a temporary patch for this winter and then next spring they will mill off a couple of inches and put topcoat down. They will probably have to look into resurfacing curb to curb.
5. He received an email regarding street lights which was already being worked on, there was a blown fuse leading to the lights on Scioto Trail at the viaduct which has been fixed but there are about a dozen lights in that area and along Scioto Trail and they are waiting on parts from Ameresco to make those repairs and that's some of the reason for the darkness on Scioto Trail. There were 38 of the downtown street lights that were out and they are in the process of getting those back on.
6. He wished everyone a Merry Christmas and a Happy New Year.

The City Manager's report was received, filed and made part of the record, on a motion by Councilman Kevin E. Johnson.

Acting Mayor's Report – Acting Mayor Kalb reported the following:

1. He's in the process of appointing some committee members but is waiting on some responses from people that he had contacted.
2. He thanked all those involved in decorating the Esplanade Christmas Tree, he was unable to attend.
3. He wished everyone a safe and happy holiday and asked that everyone remember the reason for the season.

The Acting Mayor's report was received, filed and made part of the record, on a motion by Councilman Kevin E. Johnson.

City Solicitor – Solicitor Haas reported the following:

1. Last week there was a question that came up about whether evaluations are public record or not, he issued a written opinion that he believed that they are public record.
2. He wished everyone a safe holiday season.

The City Solicitor's report was received, filed and made part of the record, on a motion by Councilman Kevin E. Johnson.

Auditor Williams – Auditor Williams reported the following:

1. The monthly reports were sent via email to the city clerk for the month of November.
2. He passed around the Current Cash position and reviewed those with Council.
3. He did attend the Christmas Tree ceremony and it was a project that he felt was very good for the community and was well received at minimal effort and cost to the city. Hopefully have better planning for next year's event.

The City Auditor's report was received, filed and made part of the record, on a motion by Councilman Kevin E. Johnson.

MISCELLANEOUS BUSINESS FROM CITY COUNCIL

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

1. He sent an email on December 3, 2014 to Manager Allen asking about an EPA notification filed by Norfolk and Southern regarding a permanent discharge of state waters and if this was something that we should be concerned about.
2. There were a number of discussion and some claims made at our previous meeting that he wished to address and to ensure that he's not misquoted, he will be reading his Council Report. "At the conclusion of our conference agenda on December 8, Council President Kalb asked the City Manager what the document the city manager had distributed earlier at the meeting was for. That document was titled "Financial Recovery Plan December 2014" and dated December 1. I remembered that our December 6 Special Session minutes noted that Councilman Kevin E. Johnson asked "if a tax increase was the solution" and Mr. Allen replied that "he had given us a memo". The City Clerk noted in the minutes that she "had not received the memo". Neither do I recall had council until December 8. The answer to Councilman Kevin E. Johnson's question of the city manager as to whether a tax increase was the solution is contained on page 7 in the final paragraph of this December 1 document. It states, "Please determine the course of action that City Council plans to take with the city finances." The City Manager did not recommend and has not specifically recommended a tax increase. It should be noted that in An Open Letter to City Council that made headlines on April 9 of this year, the city manager wrote, concerning a proposed repeal of the Limitations of Taxing Authority, that "ballot initiatives are submitted and described as tools for the city manager to use when I never requested that they be initiated." The city manager did not request that this income tax be initiated either. At our meeting two weeks ago the City Manager went on at length with an allegation that I had told the Community Development Director that she could possibly be laid off and various comments about council laying off other city employees in the room. And, of course, this accusatory discourse by the city manager concerning two members of council once again made front page news in the local newspapers; to the extent that one paper twice mentioned the name of an employee, quoting our city manager, which I consider to be not the fault of the paper but definitely an ethical breach of our personnel policies. This was all about a conversation I had with the City Clerk in the office of the Clerk and Council when a department head happened to be sitting in. I reiterate I did not say anything close to what the city manager alleges. However, I should note what the city manager had to say in public and with city employees in attendance at the conference agenda of November 24. He stated according to the minutes, that "There are 12 positions that he has in his mind that would have to be cut. We're not going to be able to do the things we need to do without laying people off and one of those is the Community development Department and we won't have that department." What is interesting about the allegations made by our city manager concerning comments I am alleged to have made regarding layoffs and etcetera is that I was essentially accused of....quoting the city manager. And it made headlines. In the future, and instead of making negative headlines, I would suggest that should the city manager have issues with council, there are two means by which most issues may be resolved: The are 1) an executive session by which we can discuss legal or personnel issues and 2) the city manager can meet with a member or up to three members of council at a time. In fact, the very first goal negotiated with and for the city manager is to meet with members of council. I should note, here at this last meeting of the year the city manager has not yet met this very first goal. The city manager also noted he is concerned for the ongoing discussion about whether or not Council has the right or should be able to or allowed to communicate with department heads or staff. That is NOT the discussion. It has already been decided, based upon a May 15 legal opinion by the City Solicitor, that Council may not make an inquiry of department heads or staff under Section 33 of the Charter; wherein inquiry was always assumed to mean "a request for information." Instead we are directed to utilize Section 40 of the Charter wherein the term "inquiry" is defined as a systematic investigation. Our second option has been to make all inquiries through the city manager; which I believe all of us have been doing. The city charter does NOT forbid council from communicating with, chatting with or even having a discussion with department heads or staff. We are simply and specifically forbidden from making an inquiry of department heads and staff; not from conversing with them! In addition, from the minutes of December 8, the city manager is reported as saying "Nine Charter amendments! He asked if Council is trying to hide from the public what we're going to do, why wouldn't there be just the income tax increase on the ballot, let's be open and honest with everyone and let the people decide and etcetera. Unlike other comments by the city manager, this one was simply a very unnecessary, unprofessional and non-constructive comment. I am reminded of a message the city manager sent me regarding his concern for

changing the City Manager’s Conference Agenda” to just “Conference Agenda”. He stated that he believed the separation between (the) legislative branch and administrative branch got blurred. I happen to believe the city manager’s comments regarding the introduction of legislation by a member of council before they were even introduced at the conference agenda blurred the separation between our legislative and administrative branches. In the two elections prior to the city manager joining us there were two charter amendments on one ballot and five on another. The first proposed the city manager/council form of government and 0.6% city income tax proposals. In that election Jeff Albrecht helped me raise money to pass the city manager issue while Kevin E. Johnson, prior to his being on council, and others helped send a large mailing to voters concerning both issues. In the second election containing five initiatives, I spent down my council campaign fund to pass these initiatives. In no instance did any elected official or voter complain that anyone was trying to hide something from the public. I should note here that I have informed council that I shall not be involved in any campaign to pass the proposed income tax we discussed earlier tonight. Also at our previous meeting, the City Solicitor stated, in brief, that “There’s been a loss of focus. There’s been more talk of a Christmas tree on the Esplanade than talk about the budget.” As a legislative body we are restricted to the rules of our council meetings in which we are required to discuss only that which is on our agenda. This holds true also for our conference agendas. We held a special meeting to discuss nothing but the budget on December 6. I introduced and all were provided a copy of legislation to raise the city’s income tax. What else would the City Solicitor have us do; and in what forum? I should remind the City Solicitor that we are a legislative body and the only elected officials to actually represent the voters concerning general city business. As for the Christmas tree; those of us on Facebook received more complaints about this issue than any other issue in a very long time. We on council are responsible for answering to citizen complaints. What were we supposed to do: tell these people that our focus is on the budget and we cannot deal with other issues? We of council are the ones who are responsible for listening to citizens who have complaints and bringing them to the attention of the city manager; whether that issue is a downed tree, panhandlers, streetlights not working, a damaged road, drains not draining, trash not picked up.... or a community’s desire to have a nice Christmas tree that is properly decorated. Of course this is not the only criticism council has received concerning the Christmas tree. On December 10, members of council received an email from the City Manager stating “I get an email at 4:56 a.m. to fix the tree debacle. I had nothing to do with this tree. My office has been receiving phone calls from angry citizens regarding a tree that my office had nothing to do with. Meanwhile, back at the office, I have one week to complete a report on my 9 goals and work on a financial recovery plan to avoid fiscal emergency, but what I am thinking, a free tree that can’t hold lights properly is so much more important. If you want the lights removed I guess I will pull employees off of other work and have them remove the lights. Just let me know.” But, I was pleased to note in Saturday’s paper that David Duncan said he had the backing of the city manager and that he spoke with the city manager and the city manager is 100 percent behind everything that David and the community was doing. As to the Christmas tree, I wish to thank at least seven members of our Fire Department, David Duncan, Snyder’s Printing and the many citizens of Portsmouth for not only decorating the tree on the Esplanade but also for creating Christmas Square and organizing Christmas events to go along with the decorating. And my thanks to Trent Williams for arranging and Rick Fraley for donating the tree. Finally it is my wish that everyone here, all city staff and the residents of Portsmouth and Scioto County have a very Merry Christmas and a Happy New Year in 2015.

2nd Ward – Councilman Saddler stated that he appreciated what Mr. Scott had to say and he felt that Council and government as a whole is trying to do the right thing and move in the right direction, nobody’s perfect and everyone has faults but we’re moving in the right direction. He agreed with Mayor Kalb on the initiative that was put forth getting the Esplanade decorated and appreciated the Fire Department for helping with the Tree event and the Veterans event. He wished everyone a Merry Christmas, Happy Hanukah, Happy Kwanzaa.

3rd Ward – Councilman Kevin E. Johnson thanked Mr. Fraley for the donated Christmas tree and he thanked Mr. Dave Duncan for spearheading the group that was on the Esplanade, the Merchants that got involved and the Portsmouth Fire Department, they all did a tremendous job. This work was all volunteer and lead by local people and working together. He wished everyone a Merry Christmas and a Happy New Year.

4th Ward – Councilman Kalb stated that he agreed with everyone concerning the Christmas tree and that something should be started earlier next year. He commented about the Railroad wanting crossings closed specifically in the fourth ward and nothing had ever been settled on that but he reported an increase in the number of train whistles that go by and he didn’t know if they were expressing their displeasure but the length of time the whistles are blown seem to be longer and louder.

5th Ward – Councilman Meadows reported that he received an anonymous letter and ordinarily doesn’t give them much credit, but the letter he received was a complaint about worker’s compensation and that the city had hired Attorney Mike Soto to work on the cases. They made reference in the letter that the City should hire a local attorney who would give a reduced amount. He would like to know what local attorney would give a reduced amount because that doesn’t make good business. The big issue was that he was asked who he would’ve recommended and his reply was Mike

Soto because he's a good attorney. He believed we're doing something right or we wouldn't be receiving complaints. His biggest issue was that if citizens want to make a complaint, they need to put their name on it, stand up and say who they are because the next time he gets an anonymous letter complaining about something, he would shred it. He then wished all a Merry Christmas.

6th Ward – Councilman Kleha had no report due to absence.

The meeting adjourned at approximately 7:20 p.m. on a motion by Councilman Kevin W. Johnson.

City Clerk

Acting Mayor