

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING

Monday December 9, 2013

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on Monday December 9, 2013 at 6:00 p.m., in the Council Chambers of the Municipal Building.

President of Council Steve Sturgill 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 (Absent)
Rich Saddler	2 nd Ward
Kevin E. Johnson	3 rd Ward
Jim Kalb	4 th Ward
Gene Meadows	5 th Ward (Absent)
Steve Sturgill	6 th Ward

Also present was Mayor David Malone, City Solicitor, John Haas, Auditor Trent Williams and City Clerk, Diana Ratliff.

Council dispensed with the reading of the Journal for the regular session of November 25, 2013 on a motion by Councilman Kalb.

Councilman Kevin W. Johnson and Councilman Meadows absences were excused, on a motion by Councilman Kevin E. Johnson.

Absences
excused

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 any item on the agenda.

LEGISLATION

The clerk gave a **third reading**, to an Ordinance authorizing the appropriation of funds in the amount of \$3,703.34 from the General Fund into Community Development Miscellaneous Line Item No. 101.661.5349 to repay unexpended Grant Funds for A-F 08-2DH1 to the State of Ohio.

Ord. #50-13
Community
Development
repayment of
unexpended
grant funds

Councilman Kalb motioned that this Ordinance be passed.

There were no questions or comments. The role was called. **VOTE: 4 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **third reading**, to an Ordinance authorizing the approval of a Provider Agreement between the Portsmouth Health Department and the City of Portsmouth for an employee health clinic to provide primary health care services to City of Portsmouth employees and the appropriation of \$60,000 from the General Fund to Health Department Fund.

Ord. #51-13
Health
Clinic for
City
Employees

Councilman Kalb motioned that this Ordinance be passed.

There were no questions or comments. The role was called. **VOTE: 4 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **third reading**, to an Ordinance authorizing the appropriation of funds in an amount not to exceed \$300,000 from CIP Fund No. 301 to CIP Land Improvements Line Item No. 301.119.5502 for Phase I of the Rehabilitation of the former Adelphia Building and allowing the Mayor to advertise for bids and contract for such services.

Ord #52-13
Adelphia
Building
Rehabilitation
Phase I

Councilman Kalb motioned that this Ordinance be passed.

Councilman Sturgill asked what the process would be after this is signed and how long the bidding process takes and would there be an issue with allowing this to go into the next calendar year to allow the City Manager to go through the process.

Director Weghorst replied that that it would be a minimum of 3 ½ weeks as you have to advertise in the newspaper for at least 2 weeks.

Councilman Saddler stated he believes that it would be the wrong thing to do because the issue has plagued our town for quite some time. He added with no disrespect to the Mayor or City Manager but he doesn't feel that this should wait for another person to take office. The employees have been working in a facility that is substandard and the intention was to get these employees out of that facility as quickly as possible. Director Sutherland has put in a lot of work to get to this point and to go through 2 readings without any objections and on the 3rd reading vote it down would be wrong and would totally stop the process.

Councilman Kalb stated that very little will be accomplished by the time the City Manager takes offices and he agrees with Councilman Saddler that there is no need to wait.

Crystal Weghorst of the Engineering department stated that if City Manager Allen would like to look over the plan that can accomplish that with no problem. If this is passed this evening, we can wait to bid it out until after the first of the year.

Auditor Williams advised that there are 3 Ordinances on the Agenda that are using CIP funds in an approximate amount of \$460,000. There's currently \$780,000 in the CIP fund and that would bring it down to \$320,000 and he just wants Council to be aware that we're coming into a low balance as we usually begin the year at \$500,000 and then another \$1,400,000 will be added over the course of 2014 from the income tax collections.

There were no questions or comments. The role was called. **VOTE: 4 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **third reading**, to an Ordinance Authorizing the Mayor to enter into a contract with Distel Construction Inc. in an amount not to exceed \$19,500 to replace a deteriorated storm sewer in the 3000 block of Orchard Drive with said funds to be appropriated from CIP Fund No. 301 upon certification by the City Auditor that the monies in said fund are available.

Ord #53-13
Orchard Drive
storm sewer

Councilman Kalb motioned that this Ordinance be passed.

There were no questions or comments. The role was called. **VOTE: 4 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **second reading**, to an Ordinance authorizing the appropriation of \$30,000 from General Fund No. 101 to Fire Department Payroll/Union Line Item No. 101.223.5115 to cover potential overtime expenses for the remainder of 2013.

Councilman Kalb motioned that this constitute a second reading.

There were no questions or comments. The role was called. **VOTE: 4 ayes – 0 nays, a second reading was declared.**

The clerk gave a **second reading**, to an Ordinance authorizing the vacation of an alley/service strip between 2925 and 2923 Brant Avenue, as requested by Jeff Keaton and more fully described in the attached legal description, with the City of Portsmouth reserving all easements to this property.

Councilman Kalb motioned that this constitute a second reading.

Councilman Saddler stated that he will be voting against this issue as he feels that it is City owned property with a value.

President Sturgill asked Solicitor Haas, since there are only 4 of us voting and one person votes "nay" what happens.

Solicitor Haas stated that it is still a second reading and the only time that the measure can fail is on the 3rd reading or if the readings have been waived.

There were no questions or comments. The role was called. **VOTE: 3 ayes – 1 nays, (R. Saddler) a second reading was declared.**

The clerk gave a **second reading**, to an Ordinance authorizing the appropriation of Moving Ohio Forward demolition reimbursals in the amount of \$138,852.54 into Community Development CIP Demolition Line Item No. 301.661.5529. **Consent Agenda item**

Councilman Kalb moved to suspend the three reading rule as it is a Consent Agenda item.

There were no questions or comments. The role was called. **VOTE: 4 ayes – 0 nays, the rule was suspended was declared.**

Ord. #54-13
Community
Development
moving Ohio
forward
demolitions

Councilman Kalb motioned that this Ordinance be passed.

Auditor Williams asked President Sturgill for a few minutes to look over the Ordinance to better make an assessment. He was granted the time and reviewed it, then stated that he just wanted to make sure he was reading it correctly and it is an appropriation from the CIP fund.

There were no questions or comments. The role was called. **VOTE: 4 ayes – 0 nays, the Ordinance was passed.**

The clerk gave a **second reading**, to an Ordinance authorizing the Mayor of the City of Portsmouth, Ohio to enter into a lease agreement with Notre Dame High School for the use of Spartan Stadium.

Councilman Kalb motioned that this constitute a second reading.

Councilman Kalb suggested in the future possibly clarifying the readings of the Ordinances. We had an Ordinance read during this meeting and only had 3 Ayes and a second reading was declared, whereas it normally takes 4 Ayes to pass an Ordinance. He believes that you don't have to call for a motion to have a vote for each reading to declare a first or second reading. The only time you need a motion is when it is a third reading or Council wants to "Table" or "Suspend the Rules" then there would need to be a vote.

Solicitor Haas stated that it is confusing, but nothing really happens on the first and second readings, if you want to defeat or pass an Ordinance it has to be on the third reading unless the rules have been suspended and then it would pass or be defeated. Historically, the vote has been taken to show that the reading took place and to see how the majority is voting on certain issues.

City Clerk Ratliff inquired that when a motion is made doesn't that open it up for conversation.

Councilman Kalb replied that it could always be worded, "any motions, comments or questions" but that would be at the President's discretion. It's not really a procedural thing that would need to be in the rules of Council.

Councilman Sturgill asked Police Chief Ware if there were any changes to the lease agreement.

Police Chief Ware stated that there was clarification of the user fees and the user fees will come back to the City for major repairs. The rest of the work is done by the Notre Dame volunteers and there will be better coordination of the use of the facility.

There were no questions or comments. The role was called. **VOTE: 4 ayes – 0 nays, a second reading was declared.**

STATEMENTS OR REMARKS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Tom Lowe – 5257 Wilson Avenue – He stated that he also owns property at 5300 Wilson Avenue and there is an issue of citizen safety in the 6th Ward. Mr. Sturgill was not made aware of this problem until it was brought to his attention so no reflection should be made against him. The issue is of people trespassing, poaching and shooting off their firearms within the city limits. His sister lives at the 5300 Wilson Avenue address with her handicapped child and the family doesn't feel it's safe to go out into the yard. The child loves the outdoors and likes to get out and run the paths in the hills along the property; he has been with the child on several occasions when gunfire has been involved with people hunting or target practicing and he feel this is just too close to their property and some of the other neighbors feel the same way but they are afraid to voice their opinions. There are times that scouting groups are invited to takes hikes and explore on their property and now they cannot allow these groups to go up into the hills for fear of their safety. The property owners that are allowing hunting on their property should be held responsible for allowing these hunters on their property as well as the hunters for discharging a firearm within the city limits. He has been threatened on numerous occasions by these hunters and he's 100% disabled and cannot defend himself against physical violence. This has been reported but nothing ever seems to get done, he'd like Council to review the Ordinances and update them to a current standard that is more in line with dealing with weapons. He stated that they are tired of it and taking a stand, they want the people responsible for allowing these actions to be held accountable.

Michelle Colvin – 1024 South 7th Street – Ironton, Ohio – She has taught for 35 years in the Portsmouth City School system and has been a taxpayer to the City of Portsmouth. She's also part owner at the 5300 Wilson Avenue address and the land which has a lot of hills and woodlands has been in their family for over 70 years. Our entire family is fearful being outside on their property especially this time of year because of the constant threat of people hunting. She had an encounter with a hunter that was carrying a gun, he came down out of the hill and she told him he was on private property and they do not allow hunting on their property, he turned around and went right back up into the woodlands. They do not feel safe in the house at this point because they are getting closer and closer to the house and fear stray bullets and arrows. There is also the issue of people making campfires which is a fire hazard and also the cell tower has been vandalized several times. There are many signs that warn private property no trespassing, no hunting, no off road vehicles, but those signs are disregarded. She believes that it's against the law to discharge a firearm or hunt within the city limits and would like to see harsher penalties and the law

enforced against those that are breaking the law. Her brother Tom has tried to keep our land safe and secure and has tried to deal with the problem, but get rude responses and threatened with physical violence. They have a neighbor that gives permission to hunt on their property and she would like to see the landowner held accountable for these actions which are causing unnecessary stress on their family.

Kathleen Dean – 5300 Wilson Avenue – She lives at 5300 Wilson Avenue and also owns property at 5383 Winchester Avenue and states that her family has had continual problems with hunters being on their property endangering her and her son and well as other people in the neighborhood. Her son has been diagnosed with Autism and loves the outdoors; he loves to ride his ATV but can no longer do so for fear of hunters. He doesn't understand why he can't go outside and play and he doesn't understand the consequences of what could happen to him. They have been up in the hills and encountered strangers with guns, she feels threatened and in danger on her property. He brother Tom has tried to explain that they are on private property but they tell him that another landowner has given them permission and he's met with the threat of physical violence and foul language. He is a disabled veteran and cannot defend himself let alone my son when it comes to physical altercations. She's scared to be outside because the neighbor who allows this can see her from their house and those people feel that she's standing in their way of hunting and joy riding and she feels that whoever is giving these people permission to hunt is responsible for her fear and she'd like something done about it.

MISCELLANEOUS BUSINESS AND REPORTS:

City Clerk's Report – City Clerk Ratliff had no report.

Mayor's Report – Mayor Malone stated that he had no business he wanted to report, but wanted to address Mr. Lowe, Ms. Dean & Ms. Colvin's issues. He stated that this was the first time he had heard anything about the situation and said that in the future to please call his office and he will make sure there is action taken. He believes that it's unfair for any resident to live in fear within their own home and he will make sure that the Police Department is made aware of this issue. He made a plea to all citizens that may be facing similar issues to contact the Mayor/City Manager's office or the Department that deals with the issue rather than waiting to come to Council because Council's hands are tied and really can't do anything. He concluded by saying that they understand the issue and will look into it.

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

President's Report – President Sturgill reported the following:

1. He had the opportunity to speak at the Rotary last week and thoroughly enjoyed it and had lots of good positive comments. The attendance was relatively good and he had the opportunity to speak about 15 minutes longer than what the Rotary normally allows.
2. He asked the Mayor about the Corp of Engineers certification along the levy. The Mayor replied that they have not quite finished and he's not sure of the whole process but Director Rick Duncan has been intimately involved in that and that information was emailed to Councilman Sturgill. Councilman Kalb added that there had been an issue with some broken down equipment. Mr. Sturgill asked the Mayor to check before the next meeting to see if there was a letter sent to the Corp of Engineers which had to be approved so that the City Manager knows exactly where the project stands. Mr. Sturgill also asked the Mayor if there were any issues with all the rain that we've had and leaves clogging up the sewers. The Mayor replied that there were none that he was aware of, however they were delayed a few days on leaf pickup because the vehicle needed maintenance.
3. He appointed Suzette Rhea to the Cultural Affairs committee.
4. He asked the Solicitor how we evaluate the effectiveness of all these Council appointed committees. Solicitor Haas replied that the Cultural Affairs committee reports to Council, they advertise, go through applications and vote on how to distribute the Hotel/Motel tax and then it's presented to Council. Councilman Kalb stated that the requirements are written within the Ordinance when it is set up. Mr. Sturgill asked if any of these committees are goal oriented. Solicitor Haas replied that the Cultural Affairs committee is set up to distribute some of the tax money. The Board of Design and Review is set up to make sure the improvements or changes that are made in our historical areas are up to certain specifications. All committees have their mandates and Council can review those mandates and make revisions if there is a need for them. Mr. Sturgill stated that we have a lot of the committees and he'd like Council to figure out a way to better utilize the Council committees that were established this year and he believes that there may be some overlapping or duplication. Solicitor Haas stated that it's something that definitely needs to be reviewed.
5. He advised that there will be a public meeting with Senator Uecker on Friday at the Welcome Center and offered an invitation to all.

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

MISCELLANEOUS BUSINESS FROM CITY COUNCIL

2nd Ward – Councilman Saddler reported the following:

1. He has had no complaints within his Ward.
2. He appointed Donna Hartlage of 3rd Street in the 2nd Ward to the Cultural Affairs committee.
3. He reminded everyone of the Parks & Recreation meeting on Tuesday, December 10, 2013 at 6:00 at the American Legion Post #23 on Court Street.

3rd Ward – Councilman Kevin E. Johnson reported that he's waiting to hear back from the person he's chosen to appoint to the Cultural Affairs committee.

4th Ward – He realizes he needs to appoint someone to the Cultural affairs committee, his wife is currently on there and he's not sure if it would be proper. Solicitor Haas advised that he sees no problem with him appointing his wife if that's his choice. He said he'd need to check with her to see if she wanted to be on the committee again.

6th Ward – Councilman Sturgill reported the following:

1. He reiterated that the Mayor will take care of the hunting issue previously discussed.
2. He appointed Tom Lowe of Wilson Avenue to the Cultural Affairs Committee.

City Solicitor – Solicitor Haas advised Council that the City was served with papers on a new law suit which was filed by Mechanical Construction over a waste water project from the summer of 2012. During the construction process there were some flooding issues and some equipment was damaged, this was turned into the insurance company and denied because the project wasn't finished and we hadn't accepted the project at that point. However, the construction company filed a breach of contract suit, which he sent to the carrier and it was sent back denied. He doesn't believe that there's any responsibility on the City's part.

City Auditor – Auditor Williams gave an update on the General Fund balance on the income tax collections. Throughout the last couple of months he's advised Council that he was waiting to see what the Oct, Nov. & Dec. collections would be to determine what our yearend balance would be and he thinks we're far enough along now that December will be insignificant and it will collect what it did last year. With the October collection in income tax up about \$200,000 over the previous year and November down \$36,000 from the previous year. We're looking at a little over \$900,000 - \$1,000,000 over last year in income tax collections and that puts us in line to hit \$10,000,000 for the first time in overall income tax collections and the general fund part of that is \$8,700,000 in income tax which is \$500,000 over what we projected in the budget and as a result we will end up with a General Fund balance of \$250,000 to end this year. We've made necessary changes over that past few years and our goal was to have the balance be back in the black this year. It's been a good year, we've hit a few road blocks, but with all the things that come we're going to end up with \$250,000 to the good in the General Fund which will bode well for starting 2014. The State will be happy to hear this and we have a meeting with them on Wednesday the 18th. We were at a **-\$900,000** at the beginning of 2013.

The meeting adjourned at approximately 6:55 p.m. on a motion by Councilman Kalb.

City Clerk

President of Council