

MINUTES

REGULAR MEETING OF COUNCIL

JUNE 8, 2009

Call to Order

Mayor Ronald A. D'Epifanio called the Regular Meeting of Council to order at 7:00 p.m. at the Fairfield Community Arts Center, 411 Wessel Drive.

Roll Call

Clerk Morsch called the roll of Council. Present members were Councilmember Judd, Councilmember Snyder, Councilmember Oler, Councilmember Senger, and Councilmember Abbott, Councilmember Rhodus, and Councilmember Meyers.

Prayer & Pledge

Councilmember Senger led in prayer followed by the Pledge of Allegiance.

Agenda Modifications

Councilmember Abbott, seconded by Councilmember Meyers, moved to add to the agenda an additional appropriation ordinance. Motion Carried 7-0.

Executive Session

Councilmember Judd, seconded by Councilmember Rhodus, moved for an executive session to discuss pending and imminent litigation and evaluation of personnel. A roll call vote was taken by the clerk. The executive session was approved by a 7-0 vote.

Special Presentations

Mayor D'Epifanio presented an award certificate to Wesley Creed for his recent attainment of the rank of Eagle Scout. Mr. Creed explained the Eagle Scout project he completed which was a brick sign for Cincinnati Christian High School.

Sharon Perry from the Butler County Board of Mental Retardation Development Disabilities presented a video "Just Like You" which presented information about the MRDD Awareness Campaign.

Citizen Comments

Ray McDaniel, 249 Palm Springs Drive, discussed the use of smart meters in Houston, Texas and the benefit of these meters. Councilmember Abbott stated our local utility, Duke Energy, is working on the smart meter project and within the next three to five years every home in the area should use smart meters. Mr. McDaniel further discussed the possibility of the city using a geothermal system.

Keith Davis, 1853 Vernon Place, updated Council on his idea to resurrect the Civil Defense Program including a possible partnership with the Kroger Company. He asked that churches interested in participating please send an email to him at keithpod@fuse.net with the subject of Civil Defense.

Fairfield Chamber of Commerce President Kert Radel invited everyone to attend the July 4th concert at the Oscar Event Center next to Jungle Jim's featuring John Sebastian.

Fairfield Township Trustee Steve Morgan thanked Mayor D'Epifanio, Law Director John Clemmons and City Manager Art Pizzano for their enthusiasm in getting this done. He thanked Council and everyone for their time and thinks this will work out great for both sides.

Mayor/Council Reports

Councilmember Snyder congratulated the 785 Fairfield graduates and offered them best wishes.

Councilmember Senger announced that bids have been sent out for the partial demolition of Fair Plaza as a first phase of the redevelopment. He congratulated Mayor D'Epifanio and his wife Patty on their 45 year wedding anniversary.

Councilmember Abbott reported the City continues to be in excellent shape. He noted total revenues are down slightly for the year.

Councilmember Meyers asked everyone to participate in the voting for Fairfield Idol through the city website.

Mayor D'Epifanio noted our hopes are that we will be back in our Council Chambers next month.

Councilmember Oler commented on the Grand Opening for Wake Nation and encouraged everyone to stop by.

Councilmember Judd commented that the repaving of Route 127 is in full swing and they are scheduled to start paving tonight with everything scheduled to be complete within one week.

Approval of Minutes

The minutes from the Regular Meeting of May 26, 2009 were approved as written.

OLD BUSINESS

PUBLIC WORKS COMMITTEE

Traffic Signal Power Backup Upgrade Project: Legislative Action: Councilmember Judd presented the third reading of an ordinance to authorize the City Manager to enter into a contract with Capital Electric Line Builders, Inc. for the 2009 Traffic Signal Power Backup Upgrade Project. Councilmember Judd, seconded by Councilmember Oler, moved for adoption. ORDINANCE NO. 82-09 ADOPTED 7-0.

Resor Road Improvement Project: Legislative Action: Councilmember Judd presented the third reading of an ordinance to authorize the City Manager to enter into a contract with ME Companies for the design of the Resor Road Improvement Project and declaring an emergency. Councilmember Judd, seconded by Councilmember Abbott, moved for adoption. Ray McDaniel, 249 Palm Springs Drive, asked if the right turn lane going onto Pleasant will have more space. City Engineer Ben Mann, stated the goal is to get wider shoulders, wider lanes and possibly remove some of the hump where we have the signal light at the top of the hill. He commented we can look at this with the engineering. ORDINANCE NO. 83-09 ADOPTED AS AN EMERGENCY 7-0.

DEVELOPMENT SERVICES COMMITTEE

River Road Planned Unit Development: Legislative Action: Councilmember Senger presented the third reading of an ordinance amending Ordinance No. 166-84, The Codified Ordinances of Fairfield, Ohio, Section 1141.02, the City of Fairfield, Ohio, Zoning Map by approving the Concept and Final Development Plan for the River Road Planned Unit Development. Councilmember Senger, seconded by Councilmember Judd, moved for adoption. Councilmember Senger explained this is the PUD the Planning Commission unanimously recommended denial of the concept and PUD for River Road. Councilmember Judd commented he visited the site and has heard comments and arguments on both sides of the issue, but what it comes down to for him is was the correct procedures and policies followed before this business got into operation and number two are they being as good a neighbor as they can to the people in the area. He stated in his opinion after visiting the site the answer to both of those questions is no. He commented obviously the zoning was not correct for this type of operation and seeing the site and seeing the encroachment with the dust, noise and the smell they are definitely not being as good of neighbors as they can be. He further commented he will be following Planning Commission's recommendation and vote against this measure tonight. David Robertson, representing Mr. Brown, stated they are requesting this zoning change to continue the kind of use that was going on all the way back to when Dewey Hacker owned the property. He stated they have been storing wood chips since 1994 and more recently in 2005 he began to clean up those wood chips by recycling them into mulch. Mr. Robertson described the topography of the site and the property lines. Mr. Robertson listed the benefits of the business to the community. He commented that there is a ridge line makes it so that you cannot see these buildings or operations from the road. Mr. Robertson stated that a road does encroach on the property, but it was built by Mr. Hacker before Mr. Baker or Mr. Brown owned the properties. He commented it was a mutual mistake up until it was surveyed earlier this year and has since been discontinued. He displayed photos of the property and discussed. Mr. Robertson explained what a manufacturer is as listed in the tax

code. Mr. Robertson further explained a definition for recycling and discussed how Mr. Brown fit that description. He further discussed the safety features for the grinder. He discussed a failed attempt by Mr. Brown and Mr. Baker to come to an agreement for Mr. Brown to purchase Mr. Baker's property. He noted since then they have had a lot of difficulty working through this. Mr. Robertson discussed the tree line border. Mr. Robertson stated he thinks there is some confusion about the dust and the smell, he thinks they are being confused where the mulch is being stored and sold at Oberson's. He stated Mr. Brown is willing to purchase the property next door at a reasonable cost or put whatever kind of barriers in order to be able to remedy the situation for Mr. Baker and he will pave the area so that there is no dust. He further commented the mulch has thousands of gallons of water into it. Mr. Robertson stated the act of storing wood chips there is most likely grandfathered, so really what we are talking about here is the mulching and getting rid of the wood chips. Kenny Baker, 3901 River Road, commented Mr. Brown's business has grown tremendously in the last two years and he really has no where else to expand if he keeps growing. Mr. Baker discussed the possibility of the large piles of mulch and wood chips catching on fire. Mr. Baker discussed the risk from the tub grinder's ability to throw debris hundreds of feet. He discussed signage that has been backed over with their heavy equipment and mentioned that they could have backed over his kids just as easily. He further discussed drinking and operating equipment that has gone on in the years past. He commented on Mr. Brown allowing other customers who come in to pick up mulch operate his bobcats and machinery to load their own vehicles. He stated Mr. Brown claims he is not creating a whole lot of dust, but in the picture he presented to Planning Commission Mr. Brown was wearing a dust mask himself. Mr. Baker further stated he recently drove a boon truck with the boon out and knocked a telephone pole down right next to the road where heavy traffic drives up and down. He commented in his opinion this is not something we need in the area and nothing against Mr. Brown, but he can operate it in another area just efficiently as he is operating it there now. James Jones, 3971 River Road, commented that Dewey Hacker was there when he lived there and he never stored wood chips he was closed down three times because of dumping. Mr. Jones discussed property values, the increased traffic with the number of more big trucks on the road, and the dust and odor that comes from the whole area and goes all over the neighborhood. Linville Abney, 3977 River Road, stated the place is a nuisance. He commented on the truck tailgates banging, it's a 24/7 operation and the dust flying. He commented he will probably take a loss on his home to get rid of it. He further commented it looks more like industrial rather than residential. Susan Sauerwein, 4185 Bedford Avenue, stated she has basically the same concern. She pointed out that the City of Hamilton chips are a boxed in effect with mature trees on three of the four sides and the fourth side is strictly a road heading back to Joyce Park. She commented the wind coming in is not going to hit it, it is not a manufacturing facility, it is strictly storage. Ms. Sauerwein further commented when the chips are dumped they are not necessarily dumped everyday and he certainly does not get rid of them everyday. She stated they are very visible from the road. Ms. Sauerwein distributed photos showing the rock piles, wood chip piles, log piles and the entrance to this lot. She discussed the mess and dust associated with mulch. Ms. Sauerwein stated the comment was made at the last meeting that had it not been for the fact of this situation coming up and no licenses, no permit, no zoning to allow for his services that he would not have been here that it was strictly caused from him being in non-compliance. Ms. Sauerwein stated the majority if not all of it except for the very small section at the top adjoining River Road is in a flood way and a flood zone area. She commented he puts dye into this mulch and she is concerned that this dye is going to get into the water reservoir. Ms. Sauerwein asked the zoning not be changed. She further commented on the smell. Mr. Robertson stated with regards to the mask that was referenced he is allergic to sycamore trees and he had been out cutting down sycamore trees and took his mask off when he got there. He commented with regards to the dye, it is all natural and OSHA does not have a problem with it. He further commented with regards to the floodplain all those mulch piles that the City of Hamilton has would have to be washed away before we got any where close to where Mr. Brown's operation is. Mr. Robertson discussed the issue of dust and what Mr. Brown is willing to do to address these concerns. He further discussed the additional tree line barrier Mr. Brown is willing to install at the front of the property as an additional barrier. Clerk Morsch called the roll of Council. Motion Defeated 0-7.

Amendment to the Zoning Map: Legislative Action: Councilmember Senger presented the third reading of an ordinance amending Ordinance No. 166-84, The Codified Ordinances of Fairfield, Ohio, Section 1141.02, the City of Fairfield, Ohio, Zoning Map. Mr. Senger stated this is a lot number 170 located on the South side of Symmes Road, from its present M-2 General Industrial classification to a B-1 institutions and office district classification. Councilmember Senger, seconded by Councilmember Abbott, moved for adoption. ORDINANCE NO. 84 -09 ADOPTED 7-0.

JEDD I Contract with Fairfield Township: Legislative Action: Councilmember Senger presented the second reading of an ordinance approving the Fairfield Township and City Joint Economic Development District I Contact and declaring an emergency. Councilmember Senger, seconded by Councilmember Judd, moved to suspend the rules requiring three readings of the ordinance. Rules Suspended 7-0. Councilmember Senger, seconded by Councilmember Oler, moved for adoption. Councilmember Senger stated there also is a non-annexation agreement association with this ordinance that we get to in new business. Councilmember Abbott thanked Mr. Morgan for being here and that a lot of hard work has been put into this over multiple years on both sides. He

stated he thinks this will be a great relationship and opportunity for the township and the city. ORDINANCE NO. 85-09 ADOPTED AS AN EMERGENCY 7-0.

Cricket Communications Antenna: Legislative Action: Councilmember Senger presented the second reading of an ordinance to authorize the City Manager to sign an option and lease agreement with Cricket Communications for an antenna on the Winton Road Water Tower. Ordinance approved for second reading only.

NEW BUSINESS

PUBLIC SAFETY COMMITTEE

Liquor Permit: Legislative Action: Councilmember Oler, seconded by Councilmember Meyers, moved that no hearing be held on the liquor permit application in the name of Terry E. Woodcock, DBA Legends, 7545 Dixie Highway (Permit Class: D3 & D6). Motion Carried 7-0.

Medical Director for Fairfield Fire Department: Background: City Manager Pizzano recommended an agreement with Dr. Steven Yamaguchi for services as the Medical Director of the Fairfield Fire Department. He stated Dr. Yamaguchi will be associating himself with Christ Hospital and our relationship with him has been exceptional. Legislative Action: Councilmember Oler presented the first reading of an ordinance to authorize the City Manager to enter into an agreement with Dr. Steven Yamaguchi, MD, FACP, for service as the Medical Director for the Fairfield Fire Department and declaring an emergency. Councilmember Oler, seconded by Councilmember Abbott, moved to suspend the rules requiring three readings of the ordinance. Rules Suspended 7-0. Councilmember Oler, seconded by Councilmember Snyder, moved for adoption. City Manager Pizzano briefly clarified the role of the Medical Director. ORDINANCE NO. 86-09 ADOPTED AS AN EMERGENCY 7-0.

PUBLIC WORKS COMMITTEE

Reading's (2) by Title Only: Councilmember Judd, seconded by Councilmember Senger, moved to read the following two ordinances by title only. Motion Carried 7-0.

2009 Guardrail Improvement Project: Background: City Manager Pizzano recommended a contract with Lake Erie Construction Company for the Guardrail Improvement Program for 2009. He commented that this is a new program that our Public Works Director Dave Butsch brought with him. He stated this will be an annual fund that Council has already approved in the budget for repairs and new installations which are targeted toward unsafe conditions where somebody might fall over off of a roadway and the lowest and best bid was Lake Erie Construction. Legislative Action: Councilmember Judd presented the first reading of an ordinance to authorize the City Manager to enter into a contract with Lake Erie Construction Company for the 2009 Guardrail Improvement Project. Councilmember Judd, seconded by Councilmember Senger, moved to suspend the rules requiring three readings of the ordinance. Rules Suspended 7-0. Councilmember Judd, seconded by Councilmember Meyers, moved for adoption. ORDINANCE NO. 87-09 ADOPTED 7-0.

Tri-County Assembly of God Driveway Project: Background: City Manager Pizzano recommended a contract with C.A. Stempfley for the Tri-County Assembly of God Access Driveway Project which came up as result of the State Route 4/Crescentville Road project currently under construction. He further clarified that particular widening of a portion of Route 4 was going to negatively impact the safety conditions for the access to a portion of the property and the agreement was that the city would make them whole in terms of creating a safe situation. Legislative Action: Councilmember Judd presented the first reading of an ordinance to authorize the City Manager to enter into a contract with C.A. Stempfley for the Tri-County Assembly of God Driveway Project and declaring an emergency. Councilmember Judd, seconded by Councilmember Senger, moved to suspend the rules requiring three readings of the ordinance. Rules Suspended 7-0. Councilmember Judd, seconded by Councilmember Oler, moved for adoption. ORDINANCE NO. 88-09 ADOPTED AS AN EMERGENCY 7-0.

DEVELOPMENT SERVICES COMMITTEE

Reading's (2) by Title Only: Councilmember Senger, seconded by Councilmember Snyder, moved to read the following two ordinances by title only. Motion Carried 7-0.

Equipment Installation at T-Mobile Tower: Background: City Manager Pizzano recommended a co-location lease consent addendum for AT&T Mobility to install equipment at the T-mobile tower located in Harbin Park. He stated the city does get 50% of any lease proceeds on co-location at this facility. Legislative Action: Councilmember Senger presented the first reading of an ordinance to authorize the City Manager to sign a co-location lease consent addendum for AT & T Mobility to install equipment at the T-mobile tower located in Harbin Park and declaring an emergency. Ordinance approved for first reading only.

Annexation Agreement: Background: City Manager Pizzano recommended an annexation agreement that was referenced with the JEDD approval with Fairfield Township. He explained this is part and parcel of the terms and conditions that were negotiated between the city and the township. He further explained there will be no annexation with one exception which is on the extreme western part of our community which is physically separated from the rest of Fairfield Township, but even that would require unanimous consent of the trustees and a majority of the land owners which is consistent with state law. Legislative Action: Councilmember Senger presented the first reading of an ordinance to authorize the City Manager to enter into an annexation agreement as part of the JEDD with Fairfield Township and declaring an emergency. Councilmember Senger, seconded by Councilmember Abbott, moved to suspend the rules requiring three readings of the ordinance. Rules Suspended 7-0. Councilmember Senger, seconded by Councilmember Oler, moved for adoption. Councilmember Senger commented as City Manager pointed out this basically is a no-annexation except for specific terms that have already been agreed upon and what location. He further commented this is an important piece of legislation and it is good to be working with the township on this. **ORDINANCE NO. 89-09 ADOPTED AS AN EMERGENCY 7-0.**

FINANCE & BUDGET COMMITTEE

Reading's (5) by Title Only: Councilmember Abbott, seconded by Councilmember Senger, moved to read the following five ordinances by title only. Motion Carried 7-0.

Agreement for Legal Services: Background: City Manager Pizzano recommended an agreement with a newly entitled law firm, Clemmons & Wolterman Law Firm, for legal services. He commented that Mr. Clemmons and Mr. Wolterman have provided legal services to our community for a number of years and they are going through a structural change with their former partners and the terms of this agreement will be exactly the same as the existing terms, fees and services provided that you currently have. Legislative Action: Councilmember Abbott presented the first reading of an ordinance to authorize the City Manager to enter into an agreement with Clemmons & Wolterman Law Firm, LLC for legal service and declaring an emergency. Councilmember Abbott, seconded by Councilmember Oler, moved to suspend the rules requiring three readings of the ordinance. Rules Suspended 7-0. Councilmember Abbott, seconded by Councilmember Meyers, moved for adoption. Councilmember Meyers thanked Mr. Clemmons and Mr. Wolterman for their years of service. He further commented they are an outstanding presence in this city. He stated they have helped this city, they've helped the residents and they've helped the business owners of this city continue the continuity and quality of life. He thanked them for their service. Keith Davis, 1853 Vernon Place, questioned a situation involving impact fees for the school in which an outside firm was needed. Law Director Clemmons stated it was not a matter of himself or his firm not feeling qualified he opined on that matter almost immediately. He further commented the city could not impose impact fees for the benefit of the schools. He further explained he believes that was constitutionally prohibited because school boards are charged with the welfare of the schools and the city is not to use its taxing or impact fee authority for the benefit of another public agency for which it does not have direct responsibility. He stated he had no problem with the issue. He further explained there was a firm engaged who actually did the mathematical analysis of what would be required if impact fees were to be assessed. As a corollary they had a law firm that also gave a second opinion it could not be constitutionally done. Mr. Clemmons further explained the analysis that was done by the consultant and the other law firm. Mr. Davis asked if this was an isolated situation. Mr. Clemmons stated believes this was an isolated incident. He further stated in the event that the legal impediments are removed then the analysis would say they are not practical and not legal anyway. **ORDINANCE NO. 90-09 ADOPTED AS AN EMERGENCY 7-0.**

Tax-Exempt Lease/Purchase agreement with Key Government Finance Inc.: Background: City Manager Pizzano recommended a tax-exempt lease/purchase agreement with Key Government Finance for the City's new voicemail system. He stated this is a reaction to a requirement under Ohio law for public record keeping. Legislative Action: Councilmember Abbott presented the first reading of an ordinance to authorize the City Manager to enter into a tax-exempt lease/purchase agreement with Key Government Finance Inc. for equipment related to the City's new voicemail system and declaring an emergency. Councilmember Abbott, seconded by Councilmember Meyers, moved to suspend the rules requiring three readings of the ordinance. Rules Suspended 7-0. Councilmember Abbott, seconded by Councilmember Meyers, moved for adoption. **ORDINANCE NO. 91-09 ADOPTED AS AN EMERGENCY 7-0.**

2009 Budget Amendment (Contractual Item): Legislative Action - Councilmember Abbott presented the first reading of an ordinance to amend Ordinance No. 161-08 entitled "An Ordinance to make estimated appropriations for the expenses and other expenditures of the City of Fairfield, Ohio, during a period beginning January 1, 2009, and ending December 31, 2009." City Manager Pizzano explained the following contractual appropriations: \$35,000 for guardrail improvement project and \$30,000 for Tri-County Assembly of God Access Driveway Project. Councilmember Abbott, seconded by Councilmember Oler, moved to suspend the rules requiring three readings of the ordinance. Rules Suspended 7-0. Councilmember Abbott, seconded by Councilmember Meyers, moved for adoption. ORDINANCE NO. 92-09 ADOPTED 7-0.

2009 Budget Amendments (Non-Contractual Items): Legislative Action - Councilmember Abbott presented the first reading of an ordinance to amend Ordinance No. 161-08 entitled "An Ordinance to make estimated appropriations for the expenses and other expenditures of the City of Fairfield, Ohio, during a period beginning January 1, 2009, and ending December 31, 2009." City Manager Pizzano explained the following non-contractual appropriations: \$4,984 for traffic signals at the intersection of Dixie/Camelot; \$12,983 for replacement of traffic reconstruction equipment; \$23,540 for Justice Center irrigation system; \$14,455 for equipment/Emergency Operations Center; \$22,315 for information technology upgrades/Municipal Building. Councilmember Abbott, seconded by Councilmember Meyers, moved to suspend the rules requiring three readings of the ordinance. Rules Suspended 7-0. Councilmember Abbott, seconded by Councilmember Meyers, moved for adoption. ORDINANCE NO. 93-09 ADOPTED 7-0.

2009 Budget Amendments (Contractual Items): Legislative Action - Councilmember Abbott presented the first reading of an ordinance to amend Ordinance No. 161-08 entitled "An Ordinance to make estimated appropriations for the expenses and other expenditures of the City of Fairfield, Ohio, during a period beginning January 1, 2009, and ending December 31, 2009." City Manager Pizzano explained the following contractual appropriations: \$50,000 for charitable donation passed onto Fairfield Community Foundation per donors request. Councilmember Abbott, seconded by Councilmember Oler, moved to suspend the rules requiring three readings of the ordinance. Rules Suspended 7-0. Councilmember Abbott, seconded by Councilmember Meyers, moved for adoption. ORDINANCE NO. 94-09 ADOPTED 7-0.

Meeting Notices

Monday, July 13 Council-Manager Briefing, 6 PM; Regular Meeting, 7 PM
Monday, August 10 Council-Manager Briefing, 6 PM; Regular Meeting, 7 PM

Executive Session

Council recessed to executive session at 8:21 p.m. to discuss pending and imminent litigation and evaluation of personnel.

Regular Meeting Reconvenes

The Regular Meeting reconvened at 9:45 p.m. No announcements were made as a result of the executive session of Council.

Adjournment

The Regular Meeting adjourned at 9:45 p.m.

ATTEST:

Clerk of Council

Mayor's Approval

Date Approved _____