

**MINUTES
REGULAR MEETING OF COUNCIL
CITY OF MENTOR-ON-THE-LAKE
MARCH 24, 2009**

The Regular Meeting of Council of March 24, 2009 for the City of Mentor-on-the-Lake, Ohio, was Called to Order by Council Vice-President, Andrew M. Rose, at 7:00 p.m.

CALL TO ORDER: PLEDGE OF ALLEGIANCE

ROLL CALL: Aye: Andrew M. Rose, Vice President
Aye: David R. Eva
Aye: Susan M. Shirley
Aye: Sharleen Connolly
Aye: Troy D. Elam
Aye: John Hawkins
Aye: Dale O. Langbehn, President

READING OF MINUTES: March 10, 2009 – Regular Meeting of Council

MOTION MADE BY MR. EVA, Seconded by Mr. Rose, to approve the Minutes for the March 10, 2009, Regular Meeting of Council, as submitted by the Clerk. **ROLL CALL:** Ayes: Council Member Rose, Eva, Shirley, Connolly, Elam, Hawkins. Nays: None. Abstain: Council Member Langbehn.

MOTION CARRIED: 6/0/1

CORRESPONDENCE: (none)

ADMINISTRATIVE AND DEPARTMENT HEAD REPORTS:

Mayor and Safety Director – Mayor Rogers

Mayor Rogers recommended, at the appropriate time, that Council approve the expenditure in the amount of \$52,323.00 to St. Paul Travelers Insurance Company for the renewal of various insurance policies.

Mayor Rogers reported that the City has been working for some time with Congressman LaTourette on the Andrews Road Reconstruction Project. A couple of years ago the City made application for funding and \$625,000 was appropriated by the Federal Government. Those funds were then sent to the Army Corps of Engineers and they were anticipating receiving those funds. Because the project is now completed those funds are not available. Congressman LaTourette's office is working diligently to try to find a rerouting of those funds so the City will be able to receive those funds. Mr. Molenaar filled out some documentation for the Army Corps of Engineers and for the Congressman's office, and there has been a lot of communication with them over the last couple of weeks. Congressman LaTourette asked that the City apply for some of the stimulus money for some of the other projects, but Mayor Rogers said the City does not want to incur any more debt. Mayor Rogers said he hopes this matter will be resolved shortly.

Administrative Director – Mr. Molenaar (no report)

Law Director – Mr. Lyons

Mr. Lyons said that on the agenda this evening is the Ordinance for the annual update of the codified ordinances. He said this is standard practice every year and recommends that Council adopt this Ordinance.

City Engineer – Mr. Sayles (no report)

QUESTIONS TO ADMINISTRATION AND DEPARTMENT HEADS: (none)

BOARD/COMMITTEE/COMMISSION REPORTS:

Ordinance Committee / Meeting of March 19, 2009 / Mr. Rose

The Ordinance Committee met on March 19, 2009 at 6:30 p.m. The purpose of the meeting was to do another review of the menu board signs and to discuss the overweight truck issue both of which were assigned to the Ordinance Committee from Council.

In attendance were Mr. Rose, Committee Chair, and Council Members Sharleen Connolly and Troy Elam in addition to Law Director, Mr. Lyons.

The menu board sign ordinance was reviewed and discussed at length. The Committee is recommending to Council that it be assigned to the Planning and Zoning Commission for the next step in consideration before it is brought before Council for passage.

The overweight truck issue was briefly discussed and that will be discussed further at the next Ordinance Committee meeting.

The next meeting is scheduled for April 9, 2009 at 6:30 p.m. at City Hall.

Mr. Hawkins asked Mr. Rose if there is an ordinance with regards to the menu board sign. Mr. Rose said there is a draft ordinance that was reviewed, and the Ordinance Committee is now recommending that the President now assign it to the Planning & Zoning Commission to review it. Because this is a zoning issue, Mr. Rose said this has to be brought to the Planning & Zoning Commission, as well, before it can come to Council. Mr. Hawkins said then he would assume that after that Council would receive copies of this ordinance. Mr. Rose said Council would receive copies after this process is completed.

OPEN TO THE PUBLIC TO SPEAK: 7:07 p.m.

CLOSED OPEN TO THE PUBLIC SECTION: 7:09 p.m.

LEGISLATION BEFORE COUNCIL:

ORDINANCE NO. 2009-O-07 SECOND READING

AN ORDINANCE CREATING A NEW SECTION TO THE CITY ORDINANCES RELATIVE TO THE ABATEMENT OF CRIMINAL ACTIVITY NUISANCES AND THE COLLECTION OF COSTS TO THE POLICE DEPARTMENT OF RESPONDING TO SUCH NUISANCES, AND DECLARING AN EMERGENCY.

Council President Langbehn asked the Law Director if this Ordinance has to go into a Third Reading. Mr. Lyons said that Council could proceed with passing it this evening if there are enough votes for Suspension of the Rules.

MOTION MADE BY MR. ROSE, Seconded by Ms. Shirley for Suspension of the Rules. ROLL CALL: Ayes: Council Member Rose, Eva, Shirley, Connolly, Langbehn. Nays: Council Member Elam and Council Member Hawkins.

MOTION CARRIED: 5/0

MOTION MADE BY MRS. CONNOLLY, Seconded by Mr. Rose for Passage.

Council President Langbehn asked the Law Director for a brief explanation of the Ordinance. Mr. Lyons said this Ordinance in this form was originally passed by the City of Shaker Heights. Shaker Heights is an aggressive City in terms of regulating problems within the City and they saw a need for this Ordinance as additional support for their police. Mr. Lyons said that additionally the Police Chief of Fairport Harbor was made aware of this Ordinance and he recommended to their Council this type of Ordinance

also be passed and they did so in 2006. City of Painesville also passed this type of Ordinance in 2008. Mr. Lyons said that Chief Doran heard about this and looked into the matter and he also thought this would be an effective tool in combating some situations in the City of Mentor-on-the-Lake by giving the Police another enforcement tool. Mr. Lyons said that he has been familiar with this enforcement in Fairport, and it has never been necessary in Fairport to take the third step of actually charging someone for having more than two nuisance violations in one year. Mr. Lyons said that after there is an incident or two that comes under this ordinance, the Police Chief will be sending out a letter advising the party involved that unless they abate the problem that is causing the nuisance, that the costs will be assessed against the real estate taxes in order to correct the situation. Mr. Lyons said the Police Chief has been talking with the Mayor and he has asked that the Mayor take this to Council for their consideration.

Mr. Elam said he likes this Ordinance and intends to support its passage. He said this was put on three readings, and he thought a public hearing would be held on this. Mr. Elam said he would like to see that process continued because it is important that the residents have had every opportunity to review it and ask questions about it. He said he likes it and supports it but would like to see the process continue forward with a third reading and also to a public hearing.

Council President Langbehn said he did ask the Law Director about a public hearing on this matter and it was indicated to him that it would not be necessary to go to public hearing on this matter. Mr. Elam said he understands this, but would still like it to proceed to three readings and a public hearing.

Mr. Hawkins said he has some problems with the way the Ordinance is drafted. He said it applies to the people who occupy the land as opposed to ownership. Mr. Lyons said this applies to both occupants and the owners. Mr. Hawkins said he cannot understand why the owner cannot just be charged, and not have to wait two times. Mr. Lyons said this does not stop them from prosecuting the perpetrator of a crime. Mr. Lyons said that one nuisance situation at a home does not start the process ticking until the second nuisance situation at the same home happens again within a one year period. Mr. Hawkins said if you have convictions, why would you have to prove anything. He said all you would have to do is get certified copies of the journal entries. Also, Mr. Hawkins said he does not like the administrative appeals process because they are subject to judicial review. Mr. Hawkins said he would prefer to give the Chief the authority. Mr. Lyons said there has to be an appeal process beyond the Chief of Police.

Mr. Elam said he thinks they are talking about two different things. Mr. Hawkins is talking about a criminal process and this is a civil process. Mr. Hawkins said he knows this is a civil process. Mr. Lyons said this Ordinance forces the occupants to be responsible individuals. Mr. Eva asked if there is a fine for each violation. Mr. Lyons said there will be two citations to begin with and that on the third citation would be when we begin to collect costs. Mr. Lyons said that is correct, for example if they would have

to assign extra police in order to watch that particular house, then that would be something that would be assessed against the property owner. Mr. Eva said then if they are renters then the owner would not be notified until the second offense. Mr. Lyons said this is also correct.

Mr. Hawkins said that to the extent they are speaking of noise violations, he believes this is absolutely correct, but a lot of this is not nebulous at all. He said this was sent to Committee as a noise ordinance and came back to Council in a different form. Mr. Hawkins said he hopes they do not use this to defer charging people with crimes. Mr. Lyons said this is not the purpose of this ordinance at all. Mr. Lyons said he thinks there is a provision in the landlord/tenant law that would allow the landlord to evict for these types of activities. Mr. Hawkins said he believes they are over thinking this and talking around the real issue. Mr. Lyons said the actual remedies for abating nuisances are really done by a case-by-case situation. Mr. Hawkins said the language on page four / subsection B bothers him. He believes the language creates an ambiguity that should not exist. He also believes there is a void for vagueness problem. Mr. Lyons said he agrees with Mr. Hawkins that the strongest way to proceed is with convictions. Mr. Hawkins said he agrees with the spirit of the ordinance, but he believes that if you are going to proceed against an owner you had better have some convictions. Mr. Hawkins said if you have convictions you do not need an appellate process. Mr. Lyons stated that you need the appellate process to satisfy due process, because you will be issuing a cost assessment against the owner and they have to have some legitimate way to appeal this which is why the administrative appeal process is in the ordinance.

Mr. Hawkins said he would like to see this go on to a third reading to address some of these issues. He is not opposed to the spirit of the ordinance but he is opposed to what he views as an ambiguity in it.

Mr. Elam said that what Mr. Hawkins is saying makes sense to him. On page 3 / section 3/ it states the Chief of Police of his designee; Mr. Elam said that perhaps it should be included there "in consultation with the Law Director / Prosecutor." Mr. Elam said he would assume this would happen anyway. Mr. Lyons said the Chief would refer this over to the prosecutor. Mr. Hawkins said he would like to give all the authority to the Chief, but he does not like administrative appeals.

Mrs. Connolly said the Ordinance Committee diligently worked on this Ordinance and a lot of thought went into it and discussion with Mr. Lyons before presenting it to Council. Mrs. Connolly said it was recommended for it to be placed on first reading to give Council the opportunity to review it, and believes that everyone should have had ample time to review it to voice their opinions on it. Mrs. Connolly said this Ordinance was brought to Council's attention because they feel it is a good ordinance one that should move forward. She does not feel that holding it off for one more reading would make much difference.

Mr. Langbehn said that by passing this ordinance this evening does not mean that it cannot be revisited should it be necessary to do so.

(Motion was made by Mrs. Connolly / Seconded by Mr. Rose for Passage)

ROLL CALL VOTE ON ORDINANCE NO. 2009-O-07: **Ayes:** Council Member Rose, Eva, Shirley, Connolly, Elam, Langbehn. **Nays:** None. **Abstain:** Council Member Hawkins.

MOTION CARRIED: 6/0/1

ORDINANCE NO. 2009-O-08

AN ORDINANCE TO APPROVE THE EDITING AND INCLUSION OF CERTAIN ORDINANCES AS PARTS OF THE VARIOUS COMPONENT CODES OF THE CODIFIED ORDINANCES; TO PROVIDE FOR THE ADOPTION OF NEW MATTER IN THE UPDATED AND REVISED CODIFIED ORDINANCES; REPEALING ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH; AND DECLARING AN EMERGENCY.

MOTION MADE BY MR. EVA, Seconded by Ms. Shirley for Suspension of the Rules. **ROLL CALL:** Ayes: Council Member Rose, Eva, Shirley, Connolly, Elam, Hawkins, Langbehn. Nays: None.

MOTION CARRIED: 7/0

MOTION MADE BY MR. EVA, Seconded by Mr. Rose for Passage. **ROLL CALL:** Ayes: Council Member Rose, Eva, Shirley, Connolly, Elam, Hawkins, Langbehn. Nays: None.

MOTION CARRIED: 7/0

OLD BUSINESS:

Mr. Hawkins said at the last meeting of Council he was concerned about the Ordinance Committee exceeding its authority. He was given a copy of the Minutes of Jan. 13, 2009 where it indicates that Mr. Langbehn did assign the matter of the temporary sign ordinance to the Ordinance Committee for their review. He also did assign the weight of trucks issue to the Ordinance Committee as well as the nuisance/noise ordinance. To the extent that his comments indicated that the Ordinance Committee exceed its authority with regards to the weight of trucks issue and sign ordinance, he did not expect to see an ordinance to come back to enforce criminal laws. In his own defense, Mr. Hawkins said the ordinance that was presented to Council struck him as being far more ambitious than the one they had referred to Committee.

Mayor Rogers stated that with the passage of Ordinance No. 2009-O-08, he would ask that Members of Council give their Codified Ordinance Books to Laura for updating.

NEW BUSINESS:

MOTION MADE BY MS. SHIRLEY, Seconded by Mr. Rose to approve the expenditure to St. Paul Travelers Insurance Company in the amount of \$52,323.00 for the renewal of various insurance policies. ROLL CALL: Ayes: Council Member Rose, Eva, Shirley, Connolly, Elam, Hawkins, Langbehn. Nays: None.

MOTION CARRIED: 7/0

ANNOUNCEMENTS AND SETTING OF MEETINGS:

Council President Langbehn said the matter of the menu board sign ordinance has been recommended by the Ordinance Committee to be reviewed by the Planning & Zoning Commission. Mr. Langbehn said he would be assigning this matter to the Planning & Zoning Commission.

Parks & Recreation Board	March 26, 2009	7:30 p.m.
Planning & Zoning Commission	April 6, 2009	7:00 p.m.
Agenda Meeting of Council	April 9, 2009	6:00 p.m.
Ordinance Committee	April 9, 2009	6:30 p.m.
Regular Meeting of Council	April 14, 2006	7:00 p.m.

ADJOURNMENT:

MOTION MADE BY MR. ROSE. Seconded by Mr. Eva for Adjournment. ROLL CALL: Ayes: Council Member Rose, Eva, Shirley, Connolly, Elam, Hawkins, Langbehn. Nays: None.

MOTION CARRIED: 7/0

The meeting adjourned at 7:50 p.m.

APPROVED:

Date

Dale O. Langbehn
President of Council

Attest: _____
Clerk of Council

