

**MINUTES
REGULAR MEETING OF COUNCIL
CITY OF MENTOR-ON-THE-LAKE
October 28, 2008**

The Regular Meeting of Council of October 28, 2008 for the City of Mentor-on-the-Lake, Ohio, was Called to Order by Council President, Dale O. Langbehn, at 7:00 p.m.

CALL TO ORDER: PLEDGE OF ALLEGIANCE

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

PUBLIC HEARING:

ORDINANCE NO. 2008-O-18 (THIRD READING)

FIRST READING: 09/23/08 / SECOND READING: 10/14/08

PUBLIC HEARING HELD ON: 10/28/08

AN ORDINANCE REPEALING EXISTING ORDINANCES THAT REGULATE FLOODLIGHTS AND OTHER FORMS OF EXTERIOR LIGHTING AND ENACTING A COMPREHENSIVE ORDINANCE TO REGULATE OUTDOOR LIGHTING IN THE CITY AND DECLARING AN EMERGENCY.

The Public Hearing for Ordinance No. 2008-O-18 was Called to Order at 7:00 p.m. The Clerk of Council read the Ordinance by its title.

Council President Langbehn asked that the Law Director provide a brief explanation of the Ordinance.

Mr. Lyons said that recently the existing Ordinances regarding exterior lighting and flood lighting in residential areas was ruled to be unconstitutional by Mentor Municipal Court. That particular case is currently on appeal.

In the meantime, he and Mr. Gurley the City Prosecutor felt that it was a good idea to take a look at their existing law to see if it could be upgraded. They took a look at some neighboring municipalities, including Mentor, and they have modified the existing outdoor lighting ordinance by repealing the existing ordinances and instead putting in a much more detailed outdoor lighting ordinance. It is broken down with definitions which defines specifically what glare is, etc. and it also has specific standards for residential districts and all outdoor lighting fixtures that can be used in residential districts. The essence of it is that all spot and floodlights should be shielded or aimed in such a way so as light cannot trespass onto residential properties. Also, if you have floodlights and other forms of exterior light they shall be shielded or aimed in such a way that the light bulb or light fixture cannot be seen by the adjacent property. The penalty for violation of this Ordinance, should Council adopt same, would be a maximum fine of \$150.00 per day for each day that there is a violation of the Ordinance. The original Ordinance had a penalty of a fourth degree misdemeanor where the fine could be up to 30 days in jail and a fine. After consultation with Mr. Gurley and also the Administration, they are recommending that the maximum penalty be a fine of not more than \$150.00 per day for each day of violation.

Council President Langbehn asked if there were any questions from any member of the audience on the Ordinance.

Skip Gray – 7574 Dahlia Drive, Mentor-on-the-Lake, Ohio

Mr. Gray asked Council, at this time, to suspend this motion so that he has time to divulge the information here. He said the minutes were just posted on the web site and he would like to have more time to go over this.

Mr. Langbehn said we are in the Third Reading of this Ordinance this evening and the Public Hearing was posted and in the News Herald.

Mr. Molenaar said that it was in the News Herald. Mr. Gray asked on what day. Mr. Molenaar said it was done three weeks ago, as it takes a 30 day notice before we can have a Public Hearing. Mr. Gray asked if it has been 30 days. Mr. Molenaar said that it was. The Clerk said it was in the newspaper on September 23rd. Mr. Molenaar said that it was posted throughout the various locations in the City.

Mr. Gray said that he disagrees with the Ordinance and he has not had adequate time to divulge the ordinance. Mr. Gray asked for the five locations of posting.

Council President Langbehn asked for persons who wished to speak in favor of the Ordinance.

There were none.

Council President Langbehn asked for persons who wish to speak against the Ordinance.

Skip Gray – 7574 Dahlia Drive, Mentor-on-the-Lake, Ohio

Mr. Gray said he was not aware of the five locations of posting of the Minutes. He said he has been using the minutes that are on line.

The Clerk said the Agendas are posted at the five various locations, not the Minutes, which she is sure that is what Mr. Molenaar was referring to. She said this posting is done by the Police Department and she said she would provide the posting list to Mr. Gray if he so wished. Mayor Rogers said one location is Yager's, another is Cal's Marathon, another is the Library, at City Hall, and at Giant Eagle. Mr. Gray said he went to the library last week, and there was nothing there. Mayor Rogers said they post it, and what they do with it after a period of time he does not know, as we do not take it down. The Clerk said the Agenda is posted every Friday after the Agenda Meeting. The Clerk said the Agenda Meeting is held the Thursday prior to each Council Meeting and the Police Department posts the agendas on Friday morning.

Mr. Lyons said he would have no objection to giving Mr. Gray a couple of weeks to review this in order to make an argument that it is void or vague, or to make suggestions on how to improve on it. He said he would have no problem with that at all.

Council President Langbehn said he will proceed with the Public Hearing, and then we could perhaps keep it on Third Reading which would allow Mr. Gray ample time between now and the next Council Meeting to perhaps come in with his objections or concerns.

Mr. Gray said it is his understanding that the City would have the police force enforce this ordinance, and he was wondering if he understood this correctly.

Mr. Lyons said if there is no requirement in our ordinances or in the laws of the State of Ohio that require a complaint in order for the police or zoning department of the City to act on a violation. Typically in a zoning situation it is usually is complaint driven. However, there is no requirement that there be an outside complaint in order to invoke the laws.

Mr. Gray said the last passage of this Ordinance was in November of 2007. Mr. Lyons said there was an amendment to the Ordinance. He said we had an Ordinance that controlled exterior lighting in commercial and condominium districts. Council brought up the fact that there should also be an ordinance that also applied to all of the zoning districts. Mr. Lyons said that this could have happened in November of 2007, and it is part of the zoning code. Mr. Lyons said this is also an amendment to the zoning code, which are the 1200 ordinances which are the planning and zoning sections of the Mentor-on-the-Lake Ordinances. Mr. Gray asked who controls that. Mr. Lyons said the Administration is responsible for enforcement of Ordinances of the City of Mentor-on-the-Lake. The zoning inspector is one of the persons who implement the zoning decisions of the City. Prosecution decisions are made usually through the Prosecutor.

Mr. Gray said that in relation to enforcement, how you go about determining whose light is in violation and whose is not. Mr. Lyons said he does not have the old ordinance in front of him but it was his recollection that the ordinance said the light had to be shielded. Mr. Gray said that he has a list in his possession whereby 226 households would fail this ordinance as stated today. Mr. Lyons said that if he is saying that there are 226 households in Mentor-on-the-Lake that would fail the ordinance as proposed because the light is not shielded he said that would be an interesting fact for Council to know. Mr. Lyons said this ordinance is the same ordinance that was adopted by the City of Mentor with some slight modifications for improvement. Mr. Lyons said that section regarding residential lighting is pretty straightforward. Mr. Lyons read this section from the Ordinance. Mr. Gray asked to define shielded. He said you can get all types of shielded lights from Home Depot. Mr. Hawkins said that if someone is charged, the judge would determine and sort out what shielded means for the purpose of the ordinance. Mr. Lyons said there are exceptions to this law, such as Christmas tree lighting etc. Mr. Lyons read this section from the ordinance. Mr. Lyons said the main problem is trying to address lights being shined into another person's property. Mr. Lyons said everyone in the City has a right to protect their own property, but not to shine their lights onto other people's homes or property. Mr. Lyons said when this was originally changed in November 2007; this was not directed at any one individual. They took what the existing standards were and applied through all districts. Now because of a court case, Mr. Lyons said they have to bolster the ordinance and go from there. Mr. Lyons said the Court of Appeals may determine that the current ordinance is constitutional. Mr. Lyons said he respects the judge's decision. Mr. Hawkins asked what the grounds were. Mr. Lyons said that it was void for vagueness. Also, Mr. Lyons said the judge did not write a decision to his best knowledge, but submitted a judgment entry saying it was void for vagueness.

Council President Langbehn said that Council does not have to vote on this Ordinance this evening. Perhaps Mr. Gray could come back with whatever he feels his discussion is. In the meantime, Mr. Langbehn said that perhaps Mr. Gray could make himself available to discuss this with either the Administration or the Police Department. Mr. Gray said he would appreciate this. Mr. Lyons said he sees nothing wrong with this decision.

Mr. Hawkins said that there are lots of people who violate the law. Mr. Gray said he understands this. He said that if there are 226 people in violation, and some of them are shining lights into bedrooms, then they should shield them. Mr. Lyons said you would not be allowed to shine your lights into someone's bedroom under this ordinance. Mr. Hawkins said he does not care when Council votes on this, but there is no law made that is never violated.

Mr. Gray said he would like to have a few weeks to look at this. Mr. Langbehn said he can call the Administration for any additional information he may need.

Council President Langbehn asked if any Members of Council wished to comment on the ordinance.

Council Member Connolly said she is disgruntled with the whole situation here in the postponing of the passing of this Ordinance. She feels that all of his questions have been answered with adequate time and opportunities for his objections to be held.

Council President Langbehn said at certain times they do try to accommodate as much as they possibly can.

Council Member Elam said that Council does not have any magic answers for anything. They try to pass ordinances to give the community at large to be decent citizens and neighbors. He said if you are doing something to bother you neighbor then stop it or adjust it. Mr. Elam said that when it gets to a point that you have to pass an ordinance to try to get people to be responsible and reasonable as neighbors to one another, this really should not be necessary. The ordinances that they are trying to pass is simply to make the community as livable as they can for everybody in general. Mr. Elam said that unfortunately there are people who do not want to conform and want to make issues of things that really should not be issues. Mr. Elam said they try to deal with this by passing an ordinance. Mr. Elam said this is not an easy thing to do because you are always dealing with the pros and cons. Mr. Elam said that being on Council for 15 years, he knows they have tried to pass ordinances and laws not to hurt people or to inflict additional burdens on people but to bring the community, neighbors, businesses, and activities into conformance with common decency and common sense for the whole community. He said this is for the goodness of the entire community and not a personal matter. Mr. Elam said he appreciates the comments from the citizens.

Council Member Eva said he would have to agree with Mrs. Connolly on this matter. He said we have gone through three readings on this since September. The Agenda is posted in five different spots in the City, and it has been in the newspaper. Again, as elected officials, Mr. Eva said they try to do what is best for the entire community, and by revising this in the first place is correcting what was done last year. Mr. Eva said it is a pretty basic concept whereby your light can only shine in your backyard and no other yard. Mr. Eva said he feels that Council should proceed with either passing this ordinance or not passing it tonight.

Council Member Elam said that would be his position also. Council Member Rose said that he feels this ordinance should be brought to a vote this evening. Council Member Hawkins said he has every intention on voting for this whether it happens this evening or not and sees no difficulty in supporting the Chair's recommendation to provide additional time. Council Member Shirley said that she feels that Council should vote on the ordinance this evening.

Council President Langbehn said he would like to amend what he said to Mr. Gray earlier. His notion was that additional time was needed to discuss and talk about it. He said he was very much prepared to go forward with this. Council President Langbehn said that he would have to show support of his colleagues in this matter.

Since this Ordinance is on the agenda, Council President Langbehn said he will ask for a motion and a second and let Council vote on this Ordinance this evening.

The Public Hearing on Ordinance No. 2008-O-18 closed at 7:29 p.m.

READING OF MINUTES: October 14, 2008 – Regular Meeting of Council

MOTION MADE BY MR. ROSE, Seconded by Ms. Shirley, to approve the Minutes for the October 14, 2008, Regular Meeting of Council, as submitted by the Clerk. **ROLL CALL:** Ayes: Council Member Shirley, Eva, Rose, Connolly, Hawkins, Langbehn. Nays: None. Abstain: Council Member Elam.

MOTION CARRIED: 6/0/1

CORRESPONDENCE: (none)

ADMINISTRATIVE AND DEPARTMENT HEAD REPORTS:

Mayor and Safety Director – Mayor Rogers

Mayor Rogers reported that the News Break went out a few days ago. Also, the City was able to sell the old fire truck on eBay for \$2,150. They have attempted to sell the copy machine but have no success in doing so.

On Thursday night, October 30, 2008, the Parks & Recreation Board in conjunction with Lake Elementary School will hold its annual Boo Bash. Mayor Rogers said that free tickets were given in exchange for dry food goods which will be donated to the local food bank.

Mayor Rogers said that on Monday, November 3, 2008, at 10:00 a.m. there will be a dedication ceremony for the new City Memorial in front of City Hall. They will also have the official raising of the flags at that time.

With respect to the new Ordinance that is present before Council, Mayor Rogers said the new language was drafted to bring the court's opinion of language into conformity with the constitution, as was so deemed by the court. If Council so chooses to vote on this ordinance this evening, the Administration would be appreciative.

Administrative Director – Mr. Molenaar (no report)

Law Director – Mr. Lyons (no report)

City Engineer – Mr. Federico

Mr. Federico reported that there are a few punch list items that are being taken care of on the Andrews Road Reconstruction Project between the contractor and ODOT. Mr. Federico reported that this project is in good shape.

QUESTIONS TO ADMINISTRATION AND DEPARTMENT HEADS:

Mr. Elam said that regarding the hole in the sidewalk issue, he thought that someone said that the contractor would be putting a grate over that area. Mr. Federico said he spoke to his office today regarding this matter, as he knew this had not been done yet. Mr. Federico said he could not get the answer today, but it is his understanding that a grate will be placed in that area as soon as possible.

BOARD/COMMITTEE/COMMISSION REPORTS:

Safety Committee / Meeting of October 28, 2008 / Mr. Hawkins

The Safety Committee met on October 28, 2008, at 6:40 pm. Present were Ms. Shirley, Mr. Rose, Mr. Hawkins, and Council President Langbehn. They discussed the letter that was written to them from a resident of the City regarding her feelings pertaining to excess animals. To assure everyone that they were giving this a thoughtful review, Mr. Hawkins asked the Committee for a motion to request the Administration to obtain whatever ordinances addresses this subject in other cities as well as the subject of exotic animals. The Committee would recess until those items were obtained and reviewed by the Committee. Mr. Hawkins said to a degree an ordinance would be redundant, as there is a nuisance ordinance, and the other would be the question of enforceability. Mr. Hawkins said when the information is given to them, they will reconvene and provide a recommendation at that time.

OPEN TO THE PUBLIC TO SPEAK: 7:37 p.m.

CLOSED OPEN TO THE PUBLIC SECTION: 7:38 p.m.

LEGISLATION BEFORE COUNCIL:

ORDINANCE NO. 2008-O-18 (THIRD READING)

FIRST READING: 09/23/08 / SECOND READING: 10/14/08

PUBLIC HEARING HELD ON: 10/28/08

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

MOTION CARRIED: 7/0

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

MOTION CARRIED: 7/0

OLD BUSINESS:

Mr. Elam said that he asked for a Resolution of Appreciation for the business owners of the City at the last meeting of Council in relationship to their patience and cooperation in the completion of Andrews Road. He would like to **make a motion** that Council prepare a Resolution of Appreciation to the business owners of the City of Mentor-on-the-Lake expressing our appreciation for their cooperation and patience throughout this project and also that we forego the business license fee for one year for these businesses (which is a token amount of \$25.00/business). The **motion was seconded by Mrs. Connolly**. Mr. **Hawkins** said he would like to amend the **motion to delete the reference of foregoing the business license fee**. **Mrs. Connolly seconded the motion to amend the motion foregoing the business license fee portion**. Mr. Eva said he would agree with Mr. Hawkins in eliminating the portion of eliminating the fee based on the fact the businesses were paid temporary easement fees already. Mr. Elam said he wanted to clarify the fact that not all business owners in the City got the temporary easement paid. The property owners got the easement paid, not necessarily the business owners who rent space from the property owners. Mr. Elam said that was his main concern.

Roll Call Vote on Amendment eliminating the portion of Mr. Elam's Motion foregoing the business license fee: ROLL CALL: Ayes: Council Member Shirley, Eva, Rose, Connolly, Hawkins, Langbehn. Nays: Council Member Elam.
MOTION ON AMENDMENT: 6/1

Roll Call on Motion for Resolution of Appreciation as Amended: ROLL CALL: Ayes: Council Member Shirley, Eva, Rose, Connolly, Elam, Hawkins, Langbehn. Nays: None.
MOTION CARRIED: 7/0

NEW BUSINESS:

Council President Langbehn said that all Members of Council should have received a memo from Chief Mahoney regarding the house burning on November 1st and 2nd. Mr. Langbehn asked the Mayor if the new equipment would be used at that time. Mayor Rogers said that the new equipment would be utilized. Mr. Langbehn also announced the flag raising ceremony at City Hall on November 3, 2008 at 10:00 a.m., and also encouraged everyone to vote on November 4th.

ANNOUNCEMENTS AND SETTING OF MEETINGS:

Boo Bash / Lake Elementary School	October 30, 2008	6:30 p.m-8:30 p.m.
Flag Raising Ceremony	November 3, 2008	10:00 a.m.
Agenda Meeting of Council	November 6, 2008	6:00 p.m.
Regular Meeting of Council	November 11, 2008	7:00 p.m.

ADJOURNMENT:

MOTION MADE BY MR. ROSE. Seconded by Ms. Shirley for Adjournment. ROLL CALL: Ayes: Council Member Shirley, Eva, Rose, Connolly, Elam, Hawkins, Langbehn. Nays: None.
MOTION CARRIED: 7/0

The meeting adjourned at 8:12 p.m.

APPROVED:

Date

Dale O. Langbehn
President of Council

Attest: _____
Clerk of Council

