

**RECORD OF PROCEEDINGS**

Minutes of

Regular

Meeting

GOVERNMENT FORMS &amp; SUPPLIES 844-224-3338 FORM NO. 10148

Held September 4, 2024 \_\_\_\_\_ 20 \_\_\_\_\_

Ontario City Council met in regular session on September 4, 2024, in the Municipal Building with Council President Eddie Gallo presiding. The meeting opened at 7:07 p.m. with the Pledge of Allegiance.

Present during roll call were Council members Troy Sapp, Dave Rehfeldt, Kyle Webb, Josh Bradley, Rose Feagin, Nathan Sunderland, Council President Eddie Gallo, Mayor Kris Knapp, Law Director Andrew Medwid, Service-Safety Director Adam Gongwer, and Clerk of Council Cathy VanAuker.

The minutes of the regular Council meeting of August 21, 2024 were presented for approval. Hearing no corrections, the minutes were approved as presented.

Scott Basilone, Manager of Clinical Programs and Services for Richland County Mental Health and Recovery Services, came forward to receive a Proclamation for Recovery Month. Mayor Knapp read the Proclamation in its entirety.

- Mr. Basilone thanked the city for the Proclamation and participation in this important month of recovery. Everything the city does and continues to do is appreciated.

**COMMITTEE REPORTS**

Mr. Webb reported on the Utilities Committee meeting held this evening to discuss OPWC grants for proposed projects:

- The 12" main in front of Lowe's is located in the middle of Lex-Springmill. The line is broken and needs relocated because it is possibly causing issues with fire safety.
- Willowdell and Maple Lane waterlines.

Out of order hydrants need identified differently than by covering them with trash bags.

Mr. Webb reported this evening's Personnel Committee meeting was held in executive session.

Mr. Bradley will send Council members a rough draft of the implementation of the Comprehensive Plan. The next Comprehensive Plan Committee meetings are October 10, 17, and 22, 2024.

Mr. Webb will help select the laptop model to replace the Surface Tablets once the Dell representative provides the requested information.

Mr. Webb tentatively scheduled a Personnel Committee meeting on September 18, 2024, at 5:30 p.m.

**MAYOR'S REPORT**

Mayor Knapp reported:

- Mayor Knapp will meet with Senator Romanchuk tomorrow, then with the Senator and his staff next week. The focus will be on updating the electric at the Ontario Commerce Center, available grants, and how the grants can be used.
- Director Gongwer was commended for his efforts in keeping up with the zoning issues. They are working on filling the Zoning Inspector's position.
- Veteran banners will remain on display until after Veterans Day. The application for the next set of banners will be posted after Veterans Day and those banners will go up in the spring. Approximately 45 banners will be purchased.
- The last day the Splash Pad will be open for the season is Sunday, September 29<sup>th</sup>.

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- Innovation of Lights was hired to put up the Christmas lights again this year at the main pavilion and on the Christmas Tree for \$1,450.
- Power sources are being upgraded for the Hagerman light show that will be displayed in the park at the end of November.
- The Police Department will attend one Council meeting per month. They will be on the agenda for the next meeting.
- Next Thursday the Mayor will attend the ODOT meeting in Columbus to present the proposed 4<sup>th</sup> Street/Rock Road roundabout.
- The Mayor will meet with each department during the budget preparation process. Each Council Committee Chair was requested to send in their goals and priorities as they relate to the budget.
  - President Gallo suggested checking the cost, to possibly include in the budget, for the officer training that is being conducted nationwide.

**SERVICE-SAFETY DIRECTOR'S REPORT**

Director Gongwer provided the following update:

- Beginning tomorrow morning, Maintenance/Cemetery Superintendent Justin Sherlock will become the new Streets Department Foreman. Notification of the open Maintenance/Cemetery position will be posted internally.
- A Certificate of Zoning Compliance was issued to Menards, allowing the storage units to open. For the next three months K.E. McCartney will monitor the grass growth, soil erosion controls, and post construction issues with the three ponds that feed into the larger pond. If all is compliant, their bond will be returned before the end of the year.
- Starbucks has been in contact with K.E. McCartney but no demo permit has been issued for their Stake-n-Shake location.
- Raising Cane's has contacted the engineer's office but no demo permit has been filed. They should be a little ahead of schedule since Denney's closed earlier than planned.
- Many yard signs and signs on electric poles have been removed. Two companies were notified the ORC does not allow anything to be attached to telephone poles, and our offsite advertising law does not allow advertising if you are not the owner of the property with a business on that property.
- The Christmas Tree Lighting, Splash Pad closure, and Trick or Treat events are updated on the Community Events page of the website and will be posted on Facebook.

As a follow-up to previous discussions:

- Mr. Webb suggested getting quotes from companies that could revamp the website so that dollar amount could be included in next year's budget.
  - Director Gongwer said the current website design has been used approximately ten years and he will contact companies for pricing.
- Mr. Rehfeldt said the city needs help with marketing and requested contacting a firm to advise on the process and promote the city.

**LAW DIRECTOR'S REPORT**

Law Director Medwid explained the changes amending Ordinance No. 24-13 to clarify the mayor does not receive two salaries while serving temporary dual roles as mayor and service-safety director but only the salary of the service-safety director.

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Law Director Medwid then read an opinion from the Ohio Attorney General allowing in-term pay raises that is attached to these minutes.

- Mayor Knapp would like this same stipulation looked at for all employees when they fill dual roles.

**PUBLIC COMMENTARY**

Robin Vanerio, 1883 Walker Lake Road, said they were told the Menards site would be monitored for a year.

- Director Gongwer said K.E. McCartney will conduct monthly inspections of the stormwater retention basin. The amount of the bond is in the 2024 budget. Holding the bond until next year would require adding that same amount to the 2025 budget.
- The Law Director will check the details of the bond.

Irene Butcher, 1815 Walker Lake Road, said Menards stopped putting grass seed and straw below the pond and by the wooded area. She was told seed would be planted all the way so it wouldn't wash down.

- Director Gongwer said they are to put grass and straw on any ground that was disturbed during the construction process. He will check with the engineers.
- Mayor Knapp said work is still being done on the small ponds to ensure they will run into the big pond.

Mike Stallings, 1915 Walker Lake Road, said the culvert between the building and the hillside was to be 6", but a 4" culvert was installed.

- Director Gongwer will check on the culvert.

Craig Hunt, 3680 Park Avenue West, asked if any facts were collected on how marijuana dispensaries would economically help the city. If the city votes down the marijuana legislation people will still find a way to get marijuana and bring it back to the city. If there isn't a financial benefit for the city, he would like to see the legislation voted down.

**CONSIDERATION OF ORDINANCES AND RESOLUTION****ORDINANCE NO. 24-13**

AN ORDINANCE AUTHORIZING THE MAYOR TO RECEIVE A SALARY EQUIVALENT TO THAT OF THE SERVICE-SAFETY DIRECTOR POSITION WHILE THE MAYOR IS SERVING BOTH ROLES FOR THE LESSER OF 45 DAYS OR AN APPOINTMENT IS MADE TO THE SERVICE-SAFETY DIRECTOR POSITION, AND DECLARING AN EMERGENCY. (AS AMENDED)

Mr. Sapp read Ordinance No. 24-13, for the second time, by title only.

**ORDINANCE NO. 24-14**

AN ORDINANCE AUTHORIZING AN OFFICIAL TEMPORARILY ACTING IN A CAPACITY OTHER THAN HIS OR HER ORIGINAL CAPACITY TO RECEIVE THE PAY OF THAT POSITION WHILE TEMPORARILY ACTING IN THAT POSITION, AND DECLARING AN EMERGENCY.

Mr. Webb read Ordinance No. 24-14, for the second time, by title only.

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## RESOLUTION NO. 24-12

A RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR.

Mr. Sunderland moved to suspend the reading of Resolution No. 24-12 on three separate days, second by Mr. Rehfeldt. Six members cast their votes Aye, zero Nay, and the motion passed. Mr. Bradley read Resolution No. 24-12, for the first time, by title only.

Mr. Bradley moved to adopt Resolution No. 24-12, second by Mr. Webb. Six members cast their votes Aye, zero Nay, and Resolution No. 24-12 was adopted.

## ORDINANCE NO 24-16

AN ORDINANCE IMPOSING A MORATORIUM UNTIL OCTOBER 31, 2024, ON THE ACCEPTANCE, CONSIDERATION AND/OR GRANTING OF ANY APPLICATIONS FOR LOCAL LICENSING APPROVAL, AND/OR ANY ZONING, OCCUPANCY, OR OTHER PERMITS RELATING TO CULTIVATORS, PROCESSORS OR RETAIL DISPENSARIES OF MARIJUANA WITHIN THE CITY OF ONTARIO, AND DECLARING AN EMERGENCY.

Ms. Feagin moved to waive the 24-hour rule for Ordinance No. 24-16, second by Mr. Sunderland. Six members cast their votes Aye, zero Nay, and Ordinance No. 24-16 was adopted.

Mr. Bradley moved to suspend the reading of Ordinance No. 24-16 on three separate days, second by Mr. Webb. Six members cast their votes Aye, zero Nay, and the motion passed. Mr. Rehfeldt read Ordinance No. 24-16, for the first time, by title only.

Mr. Rehfeldt moved to adopt Ordinance No. 24-16, second by Mr. Webb. Six members cast their votes Aye, zero Nay, and Ordinance No. 24-16 was adopted.


At 8:12 p.m., Mr. Bradley moved to enter into executive session per ORC 121.22 (G)(6), details relative to the security arrangement and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office. Second by Mr. Sunderland. At roll call, six members voted aye, zero nay, and the motion passed.

At 8:25 p.m., the meeting reconvened into regular session upon a motion by Mr. Webb, second by Mr. Sunderland.

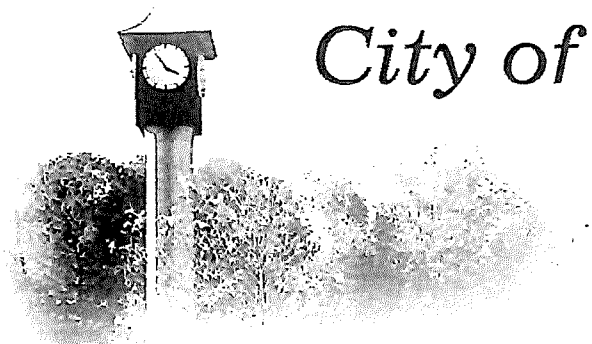
At 8:26 p.m., there being no further business to discuss, the meeting was adjourned upon a motion by Mr. Sapp, second by Mr. Sunderland.



Eddie J. Gallo, President of Council



Cathy VanAuker, Clerk of Council



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## MEMORANDUM

TO: City Council

FROM: Andrew Medwid, Law Director

**RE: In-Term Pay Adjustments/Increase or Decrease Salary During Term**

DATE: August 29, 2024

This opinion is a follow-up to my opinion dated February 24, 2022 that I was previously asked to research, but given the recent statements made in Council's last Caucus meeting on August 21, 2024, I felt it appropriate to send a reminder of Ohio Law. Here, the issue that has come up again is changing officials' pay, whether by increasing or decreasing but mainly increasing, during the official's current term of office, which seems to be illegal because the City is a statutory government meaning O.R.C. §731.07 appears to apply. In that statute, in term pay raises are specifically not allowed. However, the issue is not quite so clear, much like many issues in government.

The Ohio Supreme Court has invalidated O.R.C. §731.07 because the salaries a City pays its employees is a substantive function of local city government that the State Legislature has no business determining. See *Northern Ohio Patrolmen's Benevolent Association v. Parma*, 61 Ohio St. 2d 375, 402 N.E. 2d 519 (1980). Even more on point, this standard was upheld by the Fifth Circuit Court of Appeals (which is our controlling appellate court), with facts that are very much consistent with the issue here. See *Bellville v. Beal*, 7 Ohio App. 3d 291, 455 N.E.2d 683, 1982 Ohio App. LEXIS 11166 (5<sup>th</sup> Dist. 1982). In that case, the Village legislative authority vote THEMSELVES pay raises which raises were allowed by the Fifth Circuit Court of Appeals which specifically cited *Northern Ohio Patrolmen's Benevolent Association v. Parma*, 61 Ohio St. 2d 375.

Finally, the Ohio Attorney General has specifically opined that in-term pay raises are a core substantive function of local government thereby following the Ohio Supreme Court and advising that in-term pay raises are legal. See *1983 Ohio Op. Atty Gen. No. 36*. "It is now clear as a matter of law under the decision of the Ohio Supreme Court...although municipal corporations are bound by acts of the General Assembly spelling out the procedure by which