

MINUTES OF A REGULAR COUNCIL MEETING
October 21, 2019 – 7:30p.m.

Council of the City of Berea, Ohio, met in the Council Chamber on October 21, 2019 and was called to order by Council President Mary K. Brown at 7:30p.m. Present: Cheryl A. Banaszak, Bill DeVito, Nick Haschka, Margarette S. Key, Jim Maxwell, Rick Skoczen and Gene Zacharyasz. Absent: None. Also present: Mayor Cyril M. Kleem, Director of Public Service Paul Anzalone, Director of Law and Public Safety Barb Jones and Director of Finance Andrea Morris.

The Pledge of Allegiance followed.

This meeting was held in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code and Chapter 109 of the Codified Ordinances of the City of Berea. The certificate of compliance is on file in the Clerk's office.

Moved by Mr. Haschka, seconded by Mr. Maxwell, that the minutes from the October 4, 2019 Regular Council Meeting be approved. Vote on the motion was all ayes and no nays. The motion carried and the minutes were approved.

MAYOR'S ADMINISTRATIVE REPORT AND COMMENTS

Mrs. Jones stated that, with regard to the budget amendment that was removed from the agenda, it is not unusual for exhibits to come in on second reading, and thus since the legislation had been prepared prior to the Friday noon deadline, the Ordinance should have been placed on the agenda. She noted that the exhibit for Ordinance No. 10-3, which was placed on the agenda, has not yet been provided.

Mrs. Jones continued by stating that the Charter declares that materials should be given to the Clerk by Tuesday and the agenda should be prepared by Wednesday. If the scenario that includes the removal of the budget amendment is taken to its illogical extreme, one could argue that there is no agenda for this meeting, since one was not prepared by Wednesday. She added that the Tuesday deadline has always been a loose one, and even the recently imposed deadline of Friday at noon was complied with because legislation and addendums are not the same thing as exhibits, as they constitute an addition to the agenda. Exhibits are attached to the source document.

Mrs. Jones concluded that, per the Charter, additions can be made to the agenda in cases of emergency, when something requires immediate action. The Court has to meet its payroll, and in order for the budget to close this month, this amendment is necessary.

In response to a question from Mr. Maxwell, Mrs. Jones explained that the Clerk has been working with the Assistant Director of Finance on a budget amendment, but this amendment was not sent until Friday afternoon, as Mrs. Morris had been out of town at State mandated training. The Law Department was informed on Friday afternoon that the budget amendment was taken off the agenda.

Mrs. Brown explained that the new copy machine prompted the need for the budget amendment and since she had not yet received a copy of the lease, she wanted clarification before the amendment was placed on the agenda. She was unaware of any amendment to the

Court's budget, and felt the Administration should have called her if there was dire need for the amendment to be placed on this particular agenda.

General discussion commenced between Mayor Kleem and Mrs. Brown, with Mayor Kleem inquiring as to why the Council President would sign a purchase order without viewing the lease, as the budget is her responsibility, and Mrs. Brown countering that she understood the bill would need to be paid, but still felt sufficient information about the copier was lacking.

Mayor Kleem and Mrs. Brown also disagreed about the percentage that Council's budget was overdrawn, because the former considered only the operating budget, and the latter the entire budget, including salaries.

Mrs. Brown explained that Council has been asking for a new copier for years, as the payments on the old one were too high. She noted that the Clerk uses the copier for Planning Commission and HARB, as well.

Mayor Kleem emphasized that, in all his years with the City, he has never seen an Ordinance arbitrarily removed by the Council President and, in this case, the Court can not finish out the month.

Mr. Maxwell noted the obvious breakdown in communication between the Council President and the Administration, adding that the election season is adding fuel to the fire, but stated that this debate does not need to be hashed out in this forum, as it does not involve the rest of Council. He encouraged Mrs. Brown to sit down with someone from the Administration tomorrow morning and determine how best to resolve the budget issue and whether a Special Meeting will be required.

Mayor Kleem disagreed, because he felt the Council has been relying too heavily on the Administration. He referenced several things that have occurred in the last few months that Council has let the Administration address. He stated that a resident emailed the Administration that Mrs. Brown was helping with something that would have meant an avoidance of prevailing wage, which is illegal, and Council did not look in to the matter. Mrs. Brown held a meeting on the North End after receiving a warning from the Law Director that such a meeting could jeopardize the hotel contract, and no one said anything. Mrs. Esson said that the missing meeting audio could have occurred because Mrs. Brown turned off her microphone, but Council could not look in to it because there was no money in the budget. On behalf of the Council President, Mrs. Esson has been working with the Administration on a budget amendment since September, and it was then pulled from the agenda on Friday afternoon. He felt Council could act to place that Ordinance on the agenda this evening.

Mr. Maxwell asked if the Ordinance and exhibit are available, and Mrs. Jones stated that the legislation could be introduced under "Other Business".

Mr. Zacharyasz commented that he feels it does the people of Berea a disservice to not have the exhibits on first reading, because a lot of times that is the meat and potatoes of the legislation. Mayor Kleem countered by stating that Ordinance No. 10-3 was placed on the agenda, and that exhibit is not yet available. Also, the agenda was not finalized by the time Mrs. Esson received the exhibit. The agenda is supposed to be completed by Wednesday, but was not

distributed until Saturday. He questioned how something could be removed from the agenda when the agenda was not done. He stated that, arguably, there should not even be a meeting this evening.

Mrs. Esson took full responsibility for everything being discussed tonight, stating that she has been very lax when it comes to holding people to the Wednesday deadline, because she thought she was doing the right thing for the residents of the City. She added that the City is doing so great and is such a wonderful place to work and live. In alluding to the budget amendment, she stated that it was her fault, and admitted she never anticipated it would blow up in to this big of a problem. She did not want the Directors or the Council President to be blamed for something that is, ultimately, her responsibility. She has a great deal of respect for everyone in the room and does not want anyone to take the blame, when it should fall to her.

Mrs. Brown stated that the Friday deadline she set back in August was to help the Clerk not be forced to stay late on Friday evenings any longer. Mrs. Brown acknowledged that she was unaware of the Court's budget amendment, and felt that should have been communicated to her and there would have been a whole different discussion this evening. She suggested the Ordinance be added under "Other Business".

Mayor Kleem wondered what deadline the Administration should follow with regard to legislation, adding that the issue is not the agenda, because the agenda has been finalized after Wednesday for years. The issue is that something was removed from the agenda for the first time since he has been here. It was, as well, removed prior to the completion of the agenda.

Mrs. Brown stated that she had not received the agenda when she made the decision to keep the budget amendment off, and said that Friday at noon is the legislative deadline.

Mayor Kleem inquired as to whether or not security is being removed for Council meetings because it impacts the budget amendment. Mrs. Brown responded that security has not been removed, but a discussion needs to be had concerning who should pay for the security, and she plans to have this discussion during her report this evening. Mayor Kleem stated that if security is removed, there may be no need for Council's budget amendment this evening, as a deficit may not present itself until later this year.

Mr. Maxwell asked for clarification, and Mayor Kleem stated that if they had received the budget amendment they would have viewed a note stating that Council's budget is being amended due to the copier and miscellaneous expenses, which include security. Mrs. Morris stated that if Council decides not to have security moving forward, the \$1,200.00 budget amendment can be reduced.

Mayor Kleem noted that he thinks there should be security, but thought that security became a possible discussion for elimination. Mrs. Brown said that security may not be eliminated, but she wants to discuss who pays for it, and had spoken to the Clerk who did not feel there was a heightened need for security.

General discussion commenced concerning the possible budget amendment, and Mrs. Morris stated that \$420.00 of the increase will be attributed to security, with the rest attributed to the new copier. Mr. Maxwell clarified that the budget amendment will include additional

money to pay for the new copier lease and security for Council meetings, to be offset by decreases in 4 other departments. This will carry Council through the end of the year.

Mayor Kleem asked if Council feels that security is necessary, and Mrs. Brown said that the question is not of necessity, but who should pay for the security. In 8 years, Council has never gone over budget. The new copier is the reason for the overage this year.

Mayor Kleem asked the Clerk if there were discussions that security would be eliminated and Mrs. Esson stated that she sent an email out to Council asking for their opinion on security. She clarified that when Mrs. Brown asked if she felt threatened, she did respond in the negative, but felt that, as public servants, everyone is somewhat threatened now a days, which is a sad thing to have to admit. She, regrettably, feels security is definitely needed.

Mr. Maxwell asked if the Police Officers that had been attending Council meetings for a while were charged to Council. Mrs. Morris answered in the negative. Mr. Maxwell felt hiring private security for Council meetings was a better use of taxpayer money than occupying the time of a road Officer. He concluded that Council should continue to have security, as neighboring cities do, and felt a discussion on who should pay for it could be had as the City plans for next year's budget, reminding everyone that it all comes out of the same pot.

Mr. Haschak and Mr. Skoczen agreed that security was necessary.

REPORT AND COMMENTS BY THE OFFICERS OF THE ADMINISTRATION:

Andrea Morris – Director of Finance:

Mrs. Morris had no report.

Barb Jones – Director of Law & Public Safety:

Mrs. Jones had no report.

Paul Anzalone – Director of Public Service:

Mr. Anzalone reminded everyone that it is bulk trash collection week, stated that the road program is finishing up well and informed Council that the household hazardous waste roundup produced three tons of collection, not included tires and shredding materials, and was extremely successful.

Mr. Anzalone announced that leaf collection will begin in two weeks, and an article concerning this year's schedule will be in the November newsletter.

With regard to the grant received for bike racks and fix-it stations, Mr. Anzalone explained that several pads have already been poured, and some of the racks installed.

In response to a question from Mrs. Brown, Mr. Anzalone explained that one resident on Park Place will receive a new treelawn tree and noted that the Shade Tree Commission plants trees ward by ward. This fall, trees will be planted along Kraft Street, 7 will be replaced on Fair Street, and the City is working with First Energy to receive approval for 14-15 trees that have

been planted, but now need to be replaced, due to an error made by CEI. CEI has offered to transplant the trees.

Marty Compton – Director of Recreation:

Mr. Compton was not present.

COMMENDATIONS: None

PETITIONS: None

AUDIENCE PARTICIPATION:

Jeff Dettmer questioned whether or not the new copy machine in Council's office is more than is necessary based upon the number of clicks the Clerk uses in a typical year. Based upon his experience, he feels the new machine is much grander than is necessary.

Mr. Dettmer questioned the long-term maintenance associated with treelawn trees, and whether the City is considering where trees are planted in relation to sanitary laterals. Mr. Anzalone stated that hydrant mains, sanitary sewer laterals, and several other factors are considered when determining where trees should be planted. He cited certain examples concerning the new Fair Street trees, and Mr. Dettmer acknowledged his appreciation that these things are being taken in to account.

Finally, Mr. Dettmer expressed his concern regarding potential voting problems at St. Mary's. All of Ward 2, as well as a few other parts of the City, vote at the Church and he hoped construction would be halted that day, so as not to impede drivers heading in to vote. He asked if there was a plan in place to publicize clear routes to the voting booths that day.

Mr. Anzalone said that the project may be completed by election day and Mayor Kleem noted that a portion of the road is in and useable. He continued by stating that the City is working with the contractor to determine a schedule for that day. Regardless of whether or not work is being done, there will be signs directing voters.

Mr. Dettmer asked that the City be proactive and over-communicate this issue and subsequent solution. Mayor Kleem stated that the Board of Elections was made aware of the construction, but they were not particularly concerned. Mr. Dettmer simply asked that the City be mindful of these voters.

Mark Mozina, a resident on Robin Drive, stated that he contacted the City in the spring about exterior maintenance issues at the property behind him, specifically concerns about poison ivy. He has, since, had difficulty communicating with both Jim Brown and Mayor Kleem, and feels there has been a lack of follow-through on behalf of the City. He did thank Mrs. Banaszak for returning his call.

Mayor Kleem stated that he is aware of the issue and a related hardship, and the City is helping the owner address the situation rather than take him to Court. He said that he would

follow-up with Mr. Brown. Mr. Mozina responded that he understands, but is still concerned about the poison ivy and the risk it presents to his family and pets.

Dennis Wortham questioned if the new hotel would require an expansion of any City infrastructure. Mayor Kleem responded that nothing like that has been presented to the Administration, but if it is, it will be brought back to Council.

Mr. Wortham asked if there is any coordination of landscaping on the North End. Mayor Kleem stated that the developer will be required to bring a landscape plan to Planning Commission.

In response to a question from Mr. Wortham, Mayor Kleem said that the City's Planner has not yet responded to the City's requests for a review of all energy efficient sections of the Zoning Code. He noted, however, that a piece of legislation will be introduced so that the solar panel issue can be resolved by the end of the year.

COUNCIL COMMITTEE REPORTS AND ANNOUNCEMENTS:

Woodvale Union Cemetery Board of Trustees – Jim Maxwell

Mr. Maxwell reminded Council to let the Clerk know if they plan to tour Woodvale Cemetery, so that proper notice can be given, should it be required. Mrs. Brown thanked Joe Giaimo and the Woodvale Board of Trustees for their great presentation at the Joint Council meeting, and offered her appreciation to Mr. Maxwell for accepting a new three-year commitment as Council's representative to the Board of Trustees.

LEGISLATION – THIRD READING:

ORDINANCE NO. 9-8: AN ORDINANCE APPROVING AN AMENDMENT TO SECTION 7.20, SALE, LEASING OR OTHER ALIENATION OF LIVING UNITS, OF THE DECLARATION AND BY-LAWS OF THE RIVERSIDE GARDENS HOMEOWNERS' ASSOCIATION, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Mrs. Esson noted that she had spoken with the lawyer for the Homeowners' Association with regard to a question posed by Council. The lawyer stated that the bylaws are being reviewed and amended, and should this change be approved by Council, it will be one of many things the members of the HOA will be asked to vote upon. Mr. Maxwell expressed his opinion that adoption of this Ordinance would effectively change their bylaws, even without members consent. Mrs. Jones concurred, and Mayor Kleem recalled that the Board representative who appeared to discuss this request a few weeks ago, stated that the Homeowners' Association was, collectively in favor of this change.

Moved by Mr. Haschka, seconded by Mrs. Banaszak, that Ordinance No. 9-8 be adopted. Vote on the motion was ayes: Banaszak, DeVito, Haschka, Key, Maxwell, Skoczen and Zacharyasz. Nays: None. The motion carried.

ORDINANCE NO. 9-9: AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PURCHASE AGREEMENT WITH DMARK DEVELOPMENT LLC FOR THE SALE OF PERMANENT PARCEL NUMBERS 362-02-009, 362-03-002, 362-03-013, and 362-03-014, WHICH ARE NO LONGER NEEDED FOR MUNICIPAL PURPOSES, FOR THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$375,000) AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS NECESSARY TO EFFECTUATE THE SAME, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Moved by Mr. Haschka, seconded by Mrs. Key, that Ordinance No. 9-9 be adopted. Vote on the motion was ayes: Banaszak, DeVito, Haschka, Key, Maxwell, Skoczen and Zacharyasz. Nays: None. The motion carried.

ORDINANCE NO. 9-10: AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A COMMUNITY REINVESTMENT AREA (“CRA”) AGREEMENT WITH RAMA TIKA DEVELOPERS, LLC. AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Mr. Skoczen asked if there have been any updates from the developer. Mayor Kleem stated that the developer spoke with Mr. Madzy and things are progressing. The hotel company is onboard, at this point, and feels good about taking the next step, should this Ordinance be adopted.

General discussion commenced concerning the number of employees that will be employed, once the hotel is operational. Mayor Kleem stated that the payroll is estimated to be \$360,000 because they are, likely, simply being cautious as Community Reinvestment Area Agreements can be revoked.

Moved by Mr. Haschka, seconded by Mrs. Key, that Ordinance No. 9-10 be adopted. Vote on the motion was ayes: Banaszak, DeVito, Haschka, Key, Maxwell, Skoczen and Zacharyasz. Nays: None. The motion carried.

ORDINANCE NO. 9-11: AN ORDINANCE AUTHORIZING THE DIRECTOR OF FINANCE TO REBATE A PORTION OF THE EXCISE TAXES SET FORTH IN CHAPTER 195 OF THE CODIFIED ORDINANCES OF THE CITY OF BERA, TO RAMA TIKA MANAGEMENT, LLC, OR ITS AFFILIATE, RAMA TIKA DEVELOPERS, LLC, AS PART OF AN ECONOMIC DEVELOPMENT INCENTIVE PACKAGE IN FURTHERANCE OF THE CONSTRUCTION AND OPERATION OF AN EXTENDED-STAY SUITES HOTEL, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Moved by Mr. Maxwell, seconded by Mr. Skoczen, that Ordinance No. 9-11 be adopted. Vote on the motion was ayes: Banaszak, DeVito, Haschka, Key, Maxwell, Skoczen and Zacharyasz. Nays: None. The motion carried.

LEGISLATION – SECOND READING:

ORDINANCE NO. 10-1: AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE AGREEMENT WITH BERA LAKE TOWERS PROPERTIES, LLC FOR NON-EXCLUSIVE USE OF REAL PROPERTY TO INSTALL A GENERATOR TO PROVIDE POWER TO ITS FACILITY AND RESIDENTS, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Proposed Ordinance No. 10-1 stands on second reading.

ORDINANCE NO. 10-2: AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF BERA AND ECHO BERA ASSOCIATES, L.L.C. AND ACCEPTING THE GRANT OF A NON-EXCLUSIVE REVOCABLE LICENSE FOR THE PURPOSE OF INSTALLING SEVEN SINGLE DOWNTOWN BIKE RACKS AND ONE FIXIT STATION AT THE PARKWAY SHOPPES, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

In response to a question by Mrs. Brown, Mr. Anzalone explained that at least three fix-it stations will be positioned around the City. One will be by the pool, one by the Parkway Shoppes, and one by the Giant Eagle overflow parking lot that abuts the Metroparks. There may, also, be one at Jason Malone Park.

General discussion commenced concerning the security of these stations.

Proposed Ordinance No. 10-2 stands on second reading.

LEGISLATION – FIRST READING:

ORDINANCE NO. 10-3: AN ORDINANCE AUTHORIZING THE MAYOR TO MAKE APPLICATION FOR, AND, IF AWARDED, TO ENTER INTO A COOPERATION AGREEMENT WITH THE COUNTY EXECUTIVE OF CUYAHOGA COUNTY, OHIO, AND THE DEPARTMENT OF DEVELOPMENT FOR THE UTILIZATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM FUNDS MADE AVAILABLE BY THE HOUSING AND COMMUNITY DEVELOPMENT ACTS OF 1974, 1977, 1980 AND 1983, AS AMENDED, AND TO ADVERTISE FOR BIDS AND ENTER INTO ONE OR MORE CONTRACTS FOR THE PURPOSES SPECIFIED IN THE CDBG AGREEMENT, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Mr. Anzalone stated that the project being proposed is Phase 2 of the resurfacing of Wyleswood Drive.

Proposed Ordinance No. 10-3 stands on first reading.

ORDINANCE NO. 10-4: AN ORDINANCE AUTHORIZING THE CITY ENGINEER TO ENTER INTO A CONTRACT WITH THE NORTHEAST OHIO SEWER DISTRICT FOR THE NORTH END SEWER REHABILITATION PROJECT, PHASE 2, AND DECLARING AN EMERGENCY.

The Clerk read the title of the Ordinance.

Proposed Ordinance No. 10-4 stands on first reading.

REPORT AND COMMENTS BY THE PRESIDENT OF COUNCIL

Mrs. Brown asked for an update with regard to the audit of the sound system in the Council Chamber. Mrs. Jones replied that she had met with an attorney to see how the failure to create a record affects compliance with the public records laws.

Mr. Maxwell inquired as to whether or not the law requires an audio recording, and Mrs. Jones responded that our records retention schedule does require the audio be kept.

Mrs. Brown asked about the equipment review, and Mrs. Jones stated that the system is operating as was designed, but the City received an odd response from the vendor and is awaiting further information.

REPORTS AND COMMENTS BY THE MEMBERS OF COUNCIL

Mr. Skoczen had no report.

Mr. Zacharyasz had no report.

Mrs. Banaszak had no report.

Mr. DeVito had no report.

Mr. Haschka had no report.

Mrs. Key asked when the new Dunkin' Donuts will be opening on the North End. No one was aware of an exact date.

Mr. Maxwell commending the Service Department for their work on Wyleswood Drive.

CORRESPONDENCE

The October 4, 2019 – October 17, 2019 Correspondence is available in the Clerk's office.

OTHER BUSINESS

Mrs. Esson noted that the Proclamation of Election has been properly posted in City Hall.

Moved by Mr. Maxwell, seconded by Mr. Haschka, that the agenda be amended to include Ordinance No. 10-5, the title of which reads as follows:

ORDINANCE NO. 10-5: AN ORDINANCE APPROPRIATING FROM THE VARIOUS FUNDS TO INDIVIDUAL ACCOUNTS FOR THE CURRENT EXPENDITURES AND OTHER EXPENSES OF THE CITY OF BEREA FOR THE FISCAL YEAR ENDING DECEMBER 31, 2019, AND EXPRESSLY REPEALING ORDINANCE NO. 2019-24.

Vote on the motion was ayes: Banaszak, DeVito, Haschka, Key, Maxwell, Skoczen and Zacharyasz. Nays: None. The motion carried.

Mrs. Jones informed Council that all publication requirements concern posting after the Ordinance has been adopted, thus it is perfectly acceptable to introduce this Ordinance under “Other Business”.

Mrs. Morris noted the change to Council’s budget, stating that funds will be transferred from the Mayor’s budget, the Finance Department’s budget, the Law Department’s budget and the Public Safety Department’s budget to offset the \$1,200.00 needed for the new copier.

With regard to the amendment to the Court’s budget, Mrs. Morris stated that last time the Court proposed to transfer money from the Court Special Project Fund to the Probation Fund. This time, they are reclassifying expenditures and transferring money from the Probation Services Fund #284 to the Theft Diversion Fund #287, which is within the scope of the law.

General discussion commenced concerning the security for Council meetings and it was determined that security is important and will remain, and who should pay for it will be discussed so that the matter can be figured out for next year’s budget.

Moved by Mr. Maxwell, seconded by Mr. Haschka, that the three-reading rule be suspended for Ordinance No. 10-5. Vote on the motion was ayes: Banaszak, DeVito, Haschka, Key, Maxwell, Skoczen and Zacharyasz. Nays: None. The motion carried.

Moved by Mr. Maxwell, seconded by Mr. Haschka, that Ordinance No. 10-5 be adopted. Vote on the motion was ayes: Banaszak, DeVito, Haschka, Key, Maxwell, Skoczen and Zacharyasz. Nays: None. The motion carried.

There being no further business before Council, it was moved by Mr. Haschka and seconded by Mrs. Key, that the Regular Council Meeting be adjourned. Vote on the motion was all ayes and no nays. The motion passed and Council President Brown declared the meeting adjourned at 9:30p.m.

Mary K. Brown
President of Council

Alycia Esson
Clerk of Council

CERTIFICATE OF COMPLIANCE

The regular meeting of Council of the City of Berea, Ohio, held on the 21st day of October, 2019, was conducted in compliance with Codified Ordinances Section 109 and Ohio Revised Code Section 121.22.

Alycia Esson
Clerk of Council