

MINUTES
REGULAR MEETING OF COUNCIL
MAY 24, 2010

Call to Order

Mayor Ronald A. D'Epifanio called the Regular City Council Meeting to order at 7:00 PM at the Fairfield Municipal Building, 5350 Pleasant Avenue.

Prayer/Pledge of Allegiance

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

Roll Call

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

Agenda Modifications

No modifications were made to the agenda.

Executive Session Requests

No requests for Executive Session were made.

Public Hearing(s)

No public hearings were scheduled.

Special Presentations and Citizen Comments

Proclamation Presentation - ALS Awareness Month

Councilmember Snyder presented a proclamation declaring the month of May as ALS Awareness Month to Kim and Maycee Berkemeier. Mrs. Berkemeier stated her husband was diagnosed with ALS about two years ago. Mrs. Berkemeier commented they just returned from a trip to D.C. where they asked for continued funding from their congressman.

Presentation of Employee First Quarter STAR Awards

City Manager Pizzano presented first quarter star awards to Police Officer Aaron Meyer, Water Division Employees - Greg Cooper, Ronald Zabel, Marc Lorange and Gary Hoskins, Jason Blevens and Todd Bradbury; and Information Technology Analyst Steve Collins.

John Clemmons stated there are a number of citizens here tonight to speak about the proposed electric endorsement program and since Mr. Abbott needs to recuse himself from that discussion, he asked if it would be possible to have all of those comments at the time of the legislation.

Mayor D'Epifanio stated anything to do with that legislation will wait until the time of legislation and everyone will be given a maximum of five minutes to make their comments.

Ray McDaniels, 249 Palm Springs, asked that a moment of silence be observed for former congressman Buz Lukens. A moment of silence was observed.

Mayor/Council Reports

Councilmember Meyers announced the Groovin' on the Green concert this Thursday with the Fairfield High School Band at 6:30 PM at Village Green Park Amphitheater. He further announced the Memorial Day Parade and Ceremony on Monday, May 31st with the parade at 10:00 AM and the ceremony to begin at 11:00 AM at Veterans Memorial Park.

Councilmember Oler commented on the recent Fairfield Choraliers Cabaret, which will be an annual fundraising event. Mr. Oler commented on the American Cancer Society's Relay for Life event this past weekend as a fundraiser. He encouraged everyone to support this event next year. Mr. Oler commented on the Drum and Bugle Corps. national event that conflicts with a Council meeting on July 12th. He suggested Council consider setting the Council meeting on July 13th or the following Monday. Mayor D'Epifanio suggested July 13th and asked everyone to get with Clerk Johns on the date.

Councilmember Meyers thanked everyone who participated and donated to the Cabaret including Jeannie Meyers, Leigh Lutz, Rhonda and Teresa Durbin.

Councilmember Abbott stated we are continuing our efforts in working with the auditors on the 2009 audit, securing the debt for the Bypass Project, and continuing to finish the improvements for the online bill payment option for the water and sewer bills to make it more user friendly.

Councilmember Senger thanked and congratulated all the Star Award winners.

Councilmember Rhodus commented on the Memorial Service for former Mayor Erick Cook.

Councilmember Judd reminded everyone that the brush and limb pickup program is in full swing and the Public Works Department should be called for the pick up schedule.

Councilmember Snyder commented on Fairfield South third graders visit at the City building, court and police department. Councilmember Snyder congratulated William Van Ooij who formed Ecosil Technologies, here in Fairfield, won the first Ohio Patent Award from the Ohio Academy of Science for their invention for better bonding of rubber and steel in tires.

Mayor D'Epifanio commented on the Relay of Life and the cabaret night which included the Choraliers, Rhythm Express and Pure Elegance. Mayor D'Epifanio stated the High School baseball team won the sectionals and lost in districts.

Councilmember Judd congratulated his niece Jessica Judd for graduating from Butler Tech Thursday night and tonight she arrived in Perris Island to become a United States Marine.

Approval of Minutes

Regular Meeting of May 10, 2010

The minutes of the Regular Meeting of May 10, 2010 were approved as written.

OLD BUSINESS

PUBLIC WORKS COMMITTEE

Marty Judd, Chairman; Mike Oler, Vice Chairman; Tim Abbott, Member

Ordinance to authorize the City Manager to enter into a contract with Miller Pipeline Corporation for the 2010 lining of various storm sewers.

Councilmember Judd presented the third reading of this ordinance. Councilmember Judd, seconded by Councilmember Abbott moved to Adopt. Motion Carried 7-0. ORDINANCE NO. 48-10 ADOPTED 7-0.

Councilmember Abbott recused himself at 7:35 PM.

Ordinance to authorize the City Manager to enter into an agreement with Duke Energy for the replacement and installation of streetlights.

Councilmember Judd presented the third reading of this ordinance. Councilmember Judd, seconded by Councilmember Oler moved to Adopt. Motion Carried 6-0. Councilmember Rhodus questioned when this will happen. Public Works Director Dave Butsch stated it will be some time this summer. ORDINANCE NO. 49-10 ADOPTED 6-0.

PUBLIC UTILITIES COMMITTEE

Terry Senger, Chairman; Tim Meyers, Vice Chairman; Marty Judd, Member

Ordinance to authorize the City Manager to execute a Memorandum of Understanding with Duke Energy Retail Sales, LLC for a City endorsed reduced electric rate program for Fairfield residents and small businesses and declaring an emergency.

Councilmember Senger presented the second reading of this ordinance. He commented the purpose of the emergency would be for timing to get it in place right away. Councilmember Senger, seconded by Councilmember Meyers moved to Suspend the rules requiring three readings of this ordinance. Motion Carried 5-1. Motion Carried 5-1, Councilmember Rhodus dissenting. Councilmember Senger, seconded by Councilmember Meyers moved to Adopt. Motion Carried 6-0.

Councilmember Rhodus commented he is going to vote in favor of this ordinance, but he believes in the free enterprise system and does not believe government should be involved in endorsing any business. He further commented this has nothing to do with Duke or any of the other companies. Councilmember Rhodus stated Duke has made this offer only good with this endorsement, so he wouldn't want to vote against it and therefore make it where they wouldn't make it available to the residents.

Councilmember Meyers commented through the Cincinnati Enquirer, Clermont County Commissioners on May 10th agreed with this exact program to endorse it, which covers Batavia, Monroe, and Wayne County. He further commented in April Batavia township endorsed the program as well. Councilmember Meyers stated this is nothing new, other county commissioners, city councils as well as trustees are endorsing the program, which they've determined is a win-win for residents. He further stated one of the comments in the article is that residents have the option of signing up. Councilmember Meyers stated this isn't the first time the City has really endorsed a business, he referenced the Fairfield Flyer noting there are multiple businesses listed and explained residents do not have to buy the food at Village Green, but it is an option for them. He commented he is in favor of this particular endorsement.

Councilmember Snyder commented he has read the letter that has been approved by the legal counsel and he considers this program to really be one of the more benign types of programs you can have. He further explained even though we speak of it as an endorsement program, the letter itself does not refer to an endorsement, it really is just a statement of fact and the fact being that we buy our power from Duke Energy and as a result of we being a large customer, they are in a position to offer a program to the residents in the City of Fairfield. Councilmember Snyder stated there is literally no endorsement in the letter itself; it is just a presentation of the fact that Duke provides power to the city and as a result they are making this program available and it is strictly voluntary. He further commented other folks are welcome to proceed.

Mayor D'Epifanio emphasized that this does not tie the hands of any resident in this city. He commented Fairfield City ourselves are in a program with Duke and every citizen will still have an option to go with whatever thirty some companies that are out there; this is just giving them another opportunity to go with someone we have experience in and we are putting our name to it for that reason.

Mr. William Stout, from Dominion Retail Sales, stated they would like residents to know about the program they can offer. Mr. Stout gave a brief powerpoint presentation about Dominion Retail. He discussed that they are the fourth largest supplier of deregulated electricity and natural gas in North America and have been in business since 1997. Mr. Stout further discussed their fully staffed call center and the number of direct mail pieces sent each year. He stated they currently serve over 50,000 residential customers in Duke Energy Ohio territory and have been serving Duke Energy customers since 2003. He briefly discussed the areas they serve as a selected supplier. He stated in the state of Ohio they serve a total of 500,000 electricity and natural gas customers. Mr. Stout explained they could provide service just like Duke Energy Retail Sales through December 2011 at a fixed price of 5.89 cents per kWh. He commented this is a stable rate and is below what he understood to be the Duke Energy Retail Sales offer for the endorsement program. He further commented they have been doing direct mail at 5.99 cents for the last month or so. Mr. Stout further explained Dominion's retail offer. He stated they have been here for years, they are a big operation and they provide what he thinks is a better price. Mr. Stout stated they would like the opportunity for if not an endorsement, just making it known to the public that it is available. He further stated they would like to have that same opportunity to have the City of Fairfield communication and customer education to residents that they can do this program. Councilmember Oler asked how many employees are in the call center. Mr. Stout explained it varies, about two dozen fulltime with temporary brought in as needed. Mr. Stout stated the call center is in Pittsburg and the headquarters is in Richmond, Virginia. He commented they serve in fourteen states. Councilmember Meyers clarified and Mr. Stout conferred that Duke Energy handles service outages, and any customer issues that electricity is not working goes to Duke, not Dominion. Councilmember Senger stated the proposed price was 5.89 cents, what is the price now. Mr. Stout stated 5.89 cents, but pieces were at 5.99 cents, so it is a mil less. Councilmember Rhodus explained if they sign up with you, you are supplying the energy to Duke to provide through their wires that is coming into the homes. He further explained Duke has the

contract to service all the wires, the ground and the air. Mr. Stout explained Duke the utility company can buy power from any source, bring it into their system and through the wires and charge the tariff. He further explained deregulation allows competitors to schedule that same power on behalf of their customers into the system, it's then delivered through the wires and charged according to their contract rate.

Mayor D'Epifanio commented he thinks most people understand what is going on and that we are not tying their hands. He further commented he has not had a single call to his home, he has not had anyone approach him about this and only one has come through his office.

Steve Harper, 5513 Crystal Drive, expressed his concerns regarding Duke's rate increases based upon his own personal records and compared to United States Electrical Information Agency. He stated his kilowatt hours usage remains about the same and is consistent with any other Fairfield resident. Mr. Harper expressed his concerns with Duke's business practice including allegations in 2008 that an affiliate of Duke had conspired with large industrial users to obtain a rate increase from PUCO and Duke has requested a "rider" from PUCO to recover costs from Hurricane Ike. Mr. Harper discussed reasons he feels why Duke is offering discounts including there has been an economic downturn and there is actually an excess of capacity of electrical production of at least 8-10% capacity; competitors are active in Duke's area that must be having an effect or why would Duke be offering discounts. Mr. Harper further commented still, the discounts duke's offering don't match what competitors have. He discussed who benefits by an endorsement of Duke: City of Fairfield - little to gain but may be at a disadvantage in future negotiations; Fairfield's residents - short term yes, but they have other options as well; Duke Energy- get credibility and protects their market base, but they lose competition. Mr. Harper stated perhaps he doesn't feel this is the best use or necessary use of the Fairfield name. He stated he thinks discouraging competition is not what you want to do in this market.

Bob Kramer, 5690 Genevieve Place, stated it is like Duke is presenting themselves to Council as the underdog. He further stated he thinks Duke has plenty of credibility. He commented there should be a third alternative. Mr. Kramer commented this is a bizarre request from Duke and they should be embarrassed bringing it before City Council. He stated he has been a small business owner for years, taught small business at Xavier University and has never seen what he considers a regulated monopoly coming to a City government for help competing. Mr. Kramer stated naming a business in a publication is a lot different than a formal City Council endorsement of a company. Mr. Kramer read from Duke Energy's code of business ethics "Duke Energy succeeds in the marketplace by offering competitively priced quality products and services". Mr. Kramer commented the illustration by Dominion shows that they are not competitively priced and that is why he is a Dominion customer. He commented he has something printed that Duke paid corporate customers 100 million dollars and employees of Duke have acknowledged payments of 22 million a year to bid corporate customers as part of a deal the utility made to get an electric rate increase. Mr. Kramer stated every citizen in their market area paid that rate increase. He commented he is uncomfortable with this and passing it on an emergency basis. He further commented to endorse them; he does not feel it is the right thing.

Ray McDaniels, 249 Palm Springs Drive, discussed American Power that gets their power off the Ohio River and brings it up here to the City of Hamilton. He stated they could bring in solar panels, he commented he hasn't seen them yet from Duke. Mr. McDaniels' commented this should not be endorsed and we need a third company either First Energy or American Power. Mr. McDaniels commented he has read they are going to jack up the price from PUCO.

Keith Davis, 1853 Vernon Place, commented the issue isn't who is getting the better service or who has the best rates, it is even the appearance of an endorsement. He further commented there is a difference in accepting advertisers, saying these are the people who are sponsoring Red, White & Kaboom. He asked if there is still an exclusivity clause in that Duke has asked that in the passing of this they want no one else to have this type of endorsement during the period of the contract. Law Director Clemmons commented that is correct. Mr. Davis stated the wrong issue here is giving an endorsement.

Law Director Clemmons explained what is striving Duke is not competition from Dominion or any of these other suppliers that might be mailing letters. He commented the success rate of those is very low because percentage wise they do not take that many Duke customers. He further explained what Duke was concerned about and what Staff spoke to them about was the possibility of aggregation, which is not something we want to do because it does limit choices even if you have an opt out program. He explained it seems like all the local governments around some of whom were mentioned that have chosen aggregation end up with rates higher than what is being offered by Duke or Dominion. He clarified that it was not the staff's intention to recommend aggregation, but we insisted to Duke that we needed something that our residents could use to take advantage of the fact that there is a wholesale market to take advantage of that. Mr. Clemmons commented personally he doesn't know how many people will take advantage of it even with our name on it. He further commented he still thinks the majority of them will end up in the trash can, but he knows that if it says City of Fairfield and Duke Energy that will be more readily received than the City and Dominion because people haven't heard of that and don't know what this is. Mr. Clemmons commented the fear is there is a big inertia that will be not overcome, our people will miss the opportunity this summer to save a substantial amount of their electric bills because they just don't take the time to research it and

know. Mr. Clemmons stated this is why staff recommended this proposal and did not research all the other deregulated electric suppliers in the State of Ohio.

Mr. McDaniels asked Mr. Clemmons who researched it. Mr. Clemmons stated there was a subgroup of the staff.

Mayor D'Epifanio called for the vote.

ORDINANCE NO. 50-10 ADOPTED 6-0.

Councilmember Abbott returned to the meeting at 8:14 PM.

Ordinance to authorize the City Manager to enter into a five (5) year contract with Polydyne, Inc. for the purchase of polymers for use in the Wastewater Division.

Councilmember Senger presented the second reading of this ordinance. Ordinance approved for second reading only.

Ordinance to authorize the City Manager to enter into a contract with M Tech for the purchase of CCTV camera equipment for use by the Wastewater Division of the Public Utilities Department.

Councilmember Senger presented the second reading of this ordinance. Ordinance approved for second reading only.

NEW BUSINESS

PUBLIC SAFETY COMMITTEE

Mike Oler, Chairman; Marty Judd, Vice Chairman; Mitch Rhodus, Member

Simple Motion: Motion requesting that no hearing be held on the liquor permit application in the name of J&V Inc. DBA Ameristop Food Mart, 3791 Woodridge Blvd, Fairfield, Ohio 45014 (Permit Classes: C1, C2 and D6).

Councilmember Oler, seconded by Councilmember Meyers moved to make a simple motion that *no hearing* be held on the liquor permit application in the name of J & V Inc. DBA Ameristop Food Mart, 3791 Woodridge Blvd, Fairfield, Ohio 45014 (Permit Classes: C1, C2 and D6). Motion Carried 7-0. Simple Motion 7-10 approved 7-0.

DEVELOPMENT SERVICES COMMITTEE

Mitch Rhodus, Chairman; Mike Snyder, Vice Chairman; Tim Meyers, Member

Ordinance to authorize the City Manager to enter into an Occupancy Agreement with Bible Baptist Church to encroach on part lot 164 owned by the City of Fairfield, Ohio.

Background: City Manager Pizzano recommended an occupancy agreement with Bible Baptist Church to encroach on a 50 foot section of City property needed by the church to reposition some softball fields on property they have acquired to build a new church. He explained in return the church has donated easements for the GM ditch and provided additional right-of-way for Symmes Road.

Legislative Action: Councilmember Rhodus, seconded by Councilmember Senger moved to Read the ordinance by title only. Motion Carried 7-0. Councilmember Rhodus thanked Staff. Councilmember Rhodus presented the first reading of the ordinance. Ordinance approved for first reading only.

PUBLIC UTILITIES COMMITTEE

Terry Senger, Chairman; Tim Meyers, Vice Chairman; Marty Judd, Member

Ordinance to authorize the City Manager to enter into a contract with Hazen and Sawyer, Environmental Engineers & Scientists of Cincinnati, Ohio for engineering services associated with development of a biological computer model for the Wastewater Division.

Background: City Manager Pizzano recommended a contact with Hazen and Sawyer, Environmental Engineers & Scientists of Cincinnati to conduct engineering work associated with a biological computer model for the Wastewater Division. Legislative Action: Councilmember Senger, seconded by Councilmember Rhodus moved to Read the ordinance by title only. Motion Carried 7-0. Councilmember Senger presented the first reading of this ordinance. Mr. Senger commented that funding for this was included in the 2010-2014 Capital Improvement Program in the amount of \$30,000. Ordinance approved for first reading only.

FINANCE & BUDGET COMMITTEE
Tim Abbott, Chairman; Terry Senger, Vice Chairman; Michael Oler, Member

Councilmember Abbott, seconded by Councilmember Oler moved to Read five (5) ordinances by title only. Motion Carried 7-0.

Ordinance declaring various electronic equipment as surplus not needed for Municipal purposes and authorizing its disposal.

Background: City Manager Pizzano recommended a declaration of various electronic equipment as surplus and not needed for municipal purposes. Legislative Action: Councilmember Abbott presented the first reading of this ordinance. Councilmember Abbott, seconded by Councilmember Senger moved to Suspend the rules requiring three readings of the ordinance. Motion Carried 7-0. Councilmember Abbott, seconded by Councilmember Judd moved to Adopt. Motion Carried 7-0. ORDINANCE NO. 51-10 ADOPTED 7-0.

Ordinance designating the City of Fairfield, Ohio as a recovery zone for purposes of §§1400U-1 through 1400U-3 of the Internal Revenue Code of 1986, as amended, and approving other matters related thereto and declaring an emergency.

Background: City Manager Pizzano the next two items deal with the financing of the Bypass 4 items, the first designates the City as a recovery zone under certain provisions of the IRS code. He explained this will make the City eligible for certain funding that has come available under the American Recovery and Investment Act in connection with that process. Legislative Action: Councilmember Abbott presented the first reading of this ordinance. Councilmember Abbott, seconded by Councilmember Meyers moved to Suspend the rules requiring three readings of this ordinance. Motion Carried 7-0. Councilmember Abbott, seconded by Councilmember Meyers moved to Adopt. Motion Carried 7-0. ORDINANCE NO. 52-10 ADOPTED 7-0.

Ordinance providing for the issuance of not to exceed \$9,200,000 of bonds by the City of Fairfield, Ohio, for road improvements in the City and declaring an emergency.

Background: City Manager Pizzano recommended the issuance of the bonds, which are 9.2 million dollars that will be funded by the Street Improvement Fund. Mr. Pizzano commented we will wind up paying \$670,000 to \$805,000 annually over a twenty year period. Legislative Action: Councilmember Abbott presented the first reading of this ordinance. Councilmember Abbott, seconded by Councilmember Meyers moved to Suspend the rules requiring three readings of this ordinance. Motion Carried 7-0. Councilmember Abbott, seconded by Councilmember Meyers moved to Adopt. Motion Carried 7-0. ORDINANCE NO. 53-10 ADOPTED 7-0.

Appropriation Ordinance (Non-contractual Items) - \$8,500 for Municipal Building Annex training room equipment; \$7,200 for replacement of network printer/copier/scanner fax machine at the Wastewater Treatment Plant; and \$14,700 for repair, resealing, and restriping of the Justice Center parking lot.

Background: City Manager Pizzano recommended the following non-contractual items: \$8,500 for Municipal Building Annex training room equipment; \$7,200 for replacement of network printer/copier/scanner fax machine at the Wastewater Treatment Plant and \$14,700 for repair, resealing and restriping of the Justice Center parking lot. Legislative Action: Councilmember Abbott presented the first reading of the ordinance. Councilmember Abbott, seconded by Councilmember Rhodus moved to Suspend the rules requiring three readings of this ordinance. Motion Carried 7-0. Councilmember Abbott, seconded by Councilmember Senger moved to Adopt. Motion Carried 7-0. ORDINANCE NO. 54-10 ADOPTED 7-0.

Appropriation Ordinance (Contractual Items): \$25,000 engineering services for biological computer model for the Wastewater Division.

Background: City Manager Pizzano recommended the following contractual items: \$25,000 for engineering services for a biological computer model for the Wastewater Division. Legislative Action: Councilmember Abbott presented the first reading of this ordinance. Councilmember Abbott, seconded by Councilmember Senger moved to Suspend the rules requiring three readings of this ordinance. Motion Carried 7-0. Councilmember Abbott, seconded by Councilmember Senger moved to Adopt. Motion Carried 7-0. ORDINANCE 55-10 ADOPTED 7-0.

Meeting Schedule

Clerk Johns read the following meeting notices:

Monday, June 14 Council-Manager Briefing, 6 p.m.; Regular Meeting, 7 p.m.

Monday, July 12 Council-Manager Briefing, 6 p.m.; Regular Meeting, 7 p.m.
Monday, August 9 Council-Manager Briefing, 6 p.m.; Regular Meeting, 7 p.m.

Executive Session of Council (if needed)

Adjournment

The Regular Meeting of City Council ended at 8:25 PM.

ATTEST:

Clerk of Council

Mayor's Approval

Date Approved _____