

ORDINANCE TO SUPPLY WATER TO SOGP

PASSED IN VIOLATION
OF THE
CITY CHARTER

ISSUE

Council violated City Charter *Section 121.01 Powers; Authority as to Contracts* passing Ordinance 2003-80 authorizing the Mayor to renew a twenty year contract, effective date November 20, 2006 through November 20, 2026, with the Southern Ohio Growth Partnership (SOGP) for the purpose of furnishing water to various industrial sites owned by said (SOGP). The contract was passed August 25, 2003. Contract sells City water outside the City limits at a City rate instead of the County rate which is twice the rate.

BACKGROUND

City Charter Section 121.01 Powers; Authority as to Contracts states Council shall not authorize the making of any contract which is not to go into full operation during the term for which the members of such Council with the longest term are elected.

A second reading was given to the ordinance on August 25, 2003. The rule requiring three separate dates was suspended and the ordinance passed. The members of Council were Ann Sydnor 1st, Carol Caudill 3rd, Howard Baughman 5th, Jim Kalb 4th, Pyles 2nd (Absent), and Barb Halcomb 6th (Absent).

- 1st, 3rd, and 5th Wards term will end 2005
- 2nd, 4th, and 6th ended 2003
- Contract does not go into full operation until 2006

ACTION

Ordinance 2003-80 is in violation of the City Charter. The meeting minutes for the August 25, 2003 Council Meeting reflects a statement from a concerned citizen and past Mayor Mr. Franklin T. Gerlach of 814 7th Street *"Mr. Gerlach noting that the existing twenty-year contract with the Southern Ohio Growth Corporation doesn't expire until 2006, stated it to have been Council's practice to allow the Council that is seated at the time the contract expires to be the Council that authorizes any renewal of that contract. Saying there may be a reason for renewing the contract three years in advance, Mr. Gerlach advised Council that what they are about to do is to give about two and one-half million dollars to a private entity. He said as a citizen and a user of the water he found this to be a lot of money over the twenty years of the contract, saying this does not include any rate increases that might occur. Mr. Gerlach said it to be very unusual for Council to commit itself over such a long period. He said he knows Council has committed to making waterline improvements and he knows there are funding obligations that accompany that and felt the debt could be made more rapidly or further improvements made with that amount of money. He suggested that someone look into it more fully to make sure this is what Council wants to do considering the amount of money involved."*

COUNCIL ALTERNATIVES

1. City Council should authorize the request to repeal Ordinance 2003-80.
2. Modify the request.
3. Reject the request.
4. Take no action.

Respectfully submitted by 3rd Ward Councilman; Bob Mollette

February 14, 2005

David W. Kuhn, City Solicitor

Re: Ordinance #80-03 Renew Twenty (20) Year Contract to Supply Water to SOGP

Dear Mr. Kuhn's,

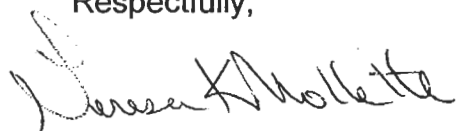
During the Portsmouth City Council Meeting on August 25, 2003 ordinance #80-03 was given a second reading to authorize the Mayor to renew an existing twenty year contract, effective **November 20, 2006** through **November 20, 2026** with Southern Ohio Growth Partnership (SOGP) for the purpose of furnishing water to various industrial sites owned by said (SOGP). A motion was passed to suspend the three reading rule then a motion was made to pass the ordinance. The ordinance was passed (ayes-4 and nays 0). It became Ordinance #80-03.

The ordinance was passed in violation of City Charter; Chapter 121.01 Powers; Authority as to Contracts. *"Council shall not authorize the making of any contract which is not to go into full operation during the term for which the members of such Council with the longest term are elected."* The 1st, 3rd, and 5th Ward member's term expired December 31, 2005 and the 2nd, 4th, and 6th Ward member's term expired December 31, 2003. The contract will not take effect until November 20, 2006. The earliest this ordinance could have been passed is after January 1, 2004.

Ordinance #80-03 is invalid and must be resubmitted to Council for review.

Please review and give written recommendations on this issue.

Respectfully,



Teresa K. Mollette
1705 Franklin Blvd.
Portsmouth, Ohio 45662
mollette@adelphia.net

743.04 (22)

A G R E E M E N T

THIS AGREEMENT, Entered into this 20th day of November, 1986, by and between THE CITY OF PORTSMOUTH, OHIO, by its City Manager, and the GREATER PORTSMOUTH GROWTH CORPORATION, WITNESSETH:

Whereas, The City of Portsmouth, Ohio, by Ordinance No. 191 of 1965, entered into a twenty-year contract on February 22, 1966 with Greater Portsmouth Growth Corporation, for the sale of water to said GPGC for purpose of furnishing water to various industrial sites owned by said Greater Portsmouth Growth Corporation; and

Whereas, said contract has now expired; and

Whereas, The City of Portsmouth, Ohio, by Ordinance No. 77, passed October 28, 1986, directed the City Manager of the City of Portsmouth, Ohio, to enter into a twenty-year contract with said Greater Portsmouth Growth Corporation to continue the sale of water for the purpose of furnishing water to various industrial sites owned by said Greater Portsmouth Growth Corporation.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. That The City of Portsmouth, Ohio, hereby agrees to furnish water to the Greater Portsmouth Growth Corporation, for a term of twenty (20) years at the following rates:

1.25 Scioto wa
1.89 CITY R
3.78 COUNTY F

QUARTERLY RATES PER 1,000 GALLON

FIRST	3,000 gallons	. . . . .	\$2.80
NEXT	22,000 gallons	. . . . .	1.00
NEXT	25,000 gallons	. . . . .	.90
NEXT	350,000 gallons	. . . . .	.80
NEXT	300,000 gallons	. . . . .	.75
NEXT	300,000 gallons	. . . . .	.70
ALL OVER	1,000,000 gallons	. . . . .	.60

2. The parties hereby agree that in the event rates charged to other industrial users shall be increased, the rates charged to said Greater Portsmouth Growth Corporation shall be increased in a like manner.

IN WITNESS WHEREOF, the parties hereunto have affixed their signatures this 20th day of November, 1986.

In presence of:

(1) Judy E. Steele
Witness

(1) THE CITY OF PORTSMOUTH, OHIO

By Richard T. Roberts
Richard T. Roberts
City Manager

(2) Mary McShaw
Witness

(2) GREATER PORTSMOUTH GROWTH CORPORATION

By David A. Gutter

Approved as to form:

Richard T. Schisler
Richard T. Schisler
City Solicitor

Date: 11-21-, 1986.

O R D I N A N C E

Year - 2003 Number -80-
renew an existing

Authorizing the Mayor to ~~enter into a~~ twenty year contract, effective November 20, 2006 through November 20, 2026, with Southern Ohio Growth Partnership (SOGP) for the purpose of furnishing water to various industrial sites owned by said (SOGP).

Whereas, City Council passed Ordinance No. 191 of 1965 to enter into a contract with the Portsmouth Area Community Improvement Corporation (now SOGP) in order to assure prospective industrial clients of the Portsmouth Area Community Improvement Corporation that sufficient water would be furnished for their use at various sites owned or to be purchased by the Portsmouth Area Community Improvement Corporation; and

Whereas, City Council renewed the aforementioned twenty year contract by the passage of Ordinance No. 77 of 1986; and

Whereas, the SOGP is in the process of purchasing a property in the City and the loaning company they are dealing with is requesting assurance the aforementioned contract will be extended for another twenty years after its expiration date in the year 2006. Now, therefore,


BE IT ORDAINED by the City Council of the City of Portsmouth, Ohio:

~~renew an existing~~ SECTION I. That the Mayor is hereby authorized to ~~enter into a~~ twenty year contract, effective November 20, 2006 through November 20, 2026, with Southern Ohio Growth Partnership (SOGP) for the purpose of furnishing water to various industrial sites owned by said (SOGP).

SECTION II. This Ordinance directing administrative action as provided for in Section 12 of the Charter of the City of Portsmouth, Ohio shall be in force and effect from and after its passage.

Passed this 25th day of August, 2003.

Attest:


City Clerk


President of Council

TITLE THREE - Legislative

- Chap. 121. Council.
 Chap. 123. Ordinances and Resolutions.
 Chap. 125. Public Improvement Contracts.

**CHAPTER 121
 Council**

121.01 Powers; authority as to contracts.

121.02 Authority as to personnel.

CROSS REFERENCES

- Powers, election, term and vacancies - see CHTR. 3
 Meetings - see CHTR. 4
 President of Council - see CHTR. 5
 Salary of members - see CHTR. 6
 City Clerk - see CHTR. 7
 Rules - see CHTR. 8
 Quorum - see CHTR. 9
 Legislative procedure - see CHTR. 10 et seq.

121.01 POWERS; AUTHORITY AS TO CONTRACTS.

The powers of Council shall be legislative only, and it shall perform no administrative duties and shall not appoint or confirm any officer or employee except those of its own body, except when otherwise provided by law. After authority to make contracts has been given and the necessary appropriation made, Council shall take no further action thereon. Such contracts shall be entered into and conducted to performance by the board or officers having charge of the matters to which they relate.

Council shall not authorize the making of any contract which is not to go into full operation during the term for which the members of such Council with the longest term are elected.

121.02 AUTHORITY AS TO PERSONNEL.

Except as otherwise provided by law, Council, by ordinance, shall determine the number of officers and employees in each department of the City government and shall fix by ordinance their respective salaries and compensation and the amount of bond to be given, if any is required.

COUNCIL**SECTION 3. POWERS, ELECTION, TERM, VACANCIES.**

Except as otherwise provided in this Charter, all legislative powers of the City shall be vested in a Council consisting of one member nominated and elected from each ward in said City. The terms of the members of Council shall be for four years in Wards 1, 3 and 5, beginning on the first Monday in January, 1986, and for four years in Wards 2, 4 and 6, beginning on the first Monday in January, 1988. The members elected in Wards 2, 4 and 6 for the term beginning on the first Monday in January, 1986, shall serve for a term of two years. If a vacancy occurs in the Council, except as the result of a recall election, some eligible person from the ward in which the vacancy occurs, shall be chosen within thirty (30) days by a majority vote of the remaining members of Council to fill the unexpired term. If, however, the remaining members of Council fail to fill such vacancy within said thirty (30) days, said vacancy shall be filled by a committee consisting of the President of Council, or in case the office of the President of Council be vacant, the Vice-President, the City Auditor and the City Solicitor, who shall certify their selection to the City Clerk.

Each member of Council elected, or appointed, from a ward shall have resided in said ward not less than six (6) months, and each member of Council elected from a ward shall have been for at least five (5) years immediately preceding his election and during the term of his office shall continue to be, a resident of the City of Portsmouth, Ohio. Any member of Council elected from a ward shall forfeit his office if he removes from said ward, and then Council shall at once fill the vacancy for the unexpired term. Each member of Council, either elected or appointed shall have the qualifications of an elector of the City. Except where authorized by law, no Council Member shall hold any other elected public office, or any other City office or City employment, during the term for which elected or appointed to Council. The Council may redivide the City into wards upon the basis of its population in the manner provided by general law, provided that such redivision shall not abridge the term of any member of Council elected or appointed thereto, nor shall any person be chosen a member of Council in divided or newly created wards except he be nominated and elected as provided herein.

(Amended 11-5-85; 5-7-02)

SECTION 4. MEETINGS OF COUNCIL.

At seven o'clock P.M. on the first Monday in January following a regular municipal election the Council shall meet at the usual place for holding Council meetings and the newly elected members shall assume the duties of office. Thereafter the Council shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than twice each month. Special meetings may be held upon vote of the Council taken in any regular or special meeting, also, shall be called by the Clerk upon the written request of the Mayor, the President of Council or three members of the Council. Any such vote or request shall state the subject to be considered at the special meeting and no other subject shall be there considered. All meetings of the Council and of committees thereof shall be open to the public, subject to the provisions of the open meeting law of the Ohio Revised Code, presently contained in Section 121.22 therein, and the rules of the Council shall provide that citizens of the City shall have a reasonable opportunity to be heard at any such meeting in regard to any matter considered thereat.

(Amended 5-2-89)

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING
Monday, August 25, 2003
6:00 P.M.

The members of the City Council of the City of Portsmouth, Ohio met in regular session on Monday, August 25, 2003, at 6:00 p.m., in the Council Chambers of the Municipal Building.

President of Council, Jim Kalb, called the meeting to order. The Pledge of Allegiance to the Flag followed an invocation by City Solicitor, David W. Kuhn.

Roll Call showed the following members to be present:

Ann Sydnor	1 st Ward
Carol Caudill	3 rd Ward
Jim Kalb	4 th Ward
Howard Baughman	6 th Ward

Also present were Mayor Gregory A. Bauer; City Solicitor, David W. Kuhn and City Auditor, M. Trent Williams.

The absence of Vice President Pyles and Councilwoman Halcomb were excused, on a motion by Councilwoman Caudill.

Council dispensed with the reading of the Journal for the regular session of August 11, 2003, on a motion by Councilwoman Caudill

There was no public hearing.

Councilwoman Sydnor, acknowledging Council's receipt of a memo from the Mayor, made a motion to add to the Agenda a resolution supporting USEC and expressing the City's desire that the American Centrifuge Commercial Plant be located at the Piketon, Ohio facility.

There were no questions or comments. The motion carried viva voce. **VOTE: ayes 4 – nays 0** The legislation was added to the Agenda as Item "7I"

STATEMENTS FROM CITIZENS ON ITEMS ON THE AGENDA

Franklin T. Gerlach – 814-7th Street, spoke with regard to Item 7c. Mr. Gerlach noting that the existing twenty-year contract with Southern Ohio Growth Corporation doesn't expire until 2006, stated it to have been Council's practice to allow the Council that is seated at the time the contract expires to be the Council that authorizes any renewal of that contract. Saying there may be a reason for renewing the contract three years in advance, Mr. Gerlach advised Council that what they are about to do is to give about two and one half million dollars to a private entity. He said as a citizen and a user of water he found this to be a lot of money over the twenty years of the contract, saying this does not include any rate increases that might occur. Mr. Gerlach said it to be very unusual for Council to commit itself over such a long period. He said he knows Council has committed to making waterline improvements and he knows there are funding obligations that accompany that and felt the debt could be made more rapidly or further improvements made with that amount of money. He suggested that someone look into it more fully to make sure this is what Council wants to do considering the amount of money involved.

LEGISLATION

The Clerk gave a **third reading** to an ordinance amending Section 1305.05 of the Codified Ordinances of the City of Portsmouth, Ohio – Fees For Basic Building code Regulated Structures.

Councilman Baughman made a motion to pass the ordinance.

There were no questions or comments. The roll was called. **VOTE: ayes 4 – nays 0** The ordinance was passed. **ORD. #76-03**

The Clerk gave a **third reading** to an ordinance authorizing the Mayor of the City of Portsmouth, Ohio, to accept easements from Joel T. Patrick and Teresa J. Patrick and from the Board of Education Green Local School District, acquire for right of way necessary for the waterline project in the Franklin Furnace area to the City of Portsmouth, Ohio

Councilwoman Caudill made a motion to pass the ordinance.

There were no questions or comments. The roll was called. **VOTE: ayes 4 – nays 0** The ordinance was passed. **ORD. #77-03**

The Clerk gave a **second reading** to an ordinance authorizing the Mayor to renew an existing twenty year contract, effective November 20 2006 through November 20, 2026, with Southern Ohio Growth Partnership (SOGP) for the purpose of furnishing water to various industrial sites owned by said (SOGP).

Councilman Baughman moved to suspend the rule requiring an ordinance be read on three separate dates.

There were no questions or comments. The roll was called. **VOTE: ayes 4 – nays - The rule was suspended.**

Councilman Baughman made a motion to pass the ordinance.

In response to the President's request for questions or comments, Councilwoman Sydnor, with regard to Mr. Gerlach's questions and comments, stated that it to be her understanding that in 1965 this idea was conceived by, what was then known as Portsmouth Area Community Improvement Corporation. She said the gentlemen who formed this corporation to do development within the county needed to generate funds and therefore this agreement was worked out with the City and an ordinance was passed in 1966 that authorized a twenty-year contract for the purpose of furnishing water to various industrial sites owned by the corporation. She pointed out that in 1986, City Council renewed the contract for another twenty years. She acknowledged Mr. Gerlach to be correct that this last renewal is not due again until 2006. She said the corporation, now known as Southern Ohio Growth Partnership has made a decision and stepped forward with the Welcome Center. She noted that since there is not any guarantee of federal money SOGP needs a guarantee of a cash flow in order to be able to commit to this project. She said the purpose of renewing the contract is to guarantee the local lending institutions funds will be forthcoming. To Mr. Gerlach she acknowledged that Council does not usually renew a contract early but noted this to be a project that will benefit, not only Portsmouth, but Scioto County, and hopefully, the region. Mrs. Sydnor reiterated the purpose for which SOGP needed this renewal to take to the financial institution.

The Mayor stated that in addition this is assurance that that revenue stream will continue and will allow funds to retire the debt for the welcome center property in twenty years. The Mayor also advised that included in the contract is the ability, when the City increases its water rates, that increase is passed along to SOGP which is then passed on to whatever entities have purchased water. He said no matter what increases occur over the twenty years the City will not lose any money on this deal.

Councilman Baughman agreed with everything stated by Councilwoman Sydnor and the Mayor. He also described this to be one of the most exciting things that has come before Council. Mr. Baughman said one of the most frustrating things with being on Council is to adhere to all the rules and regulations with regard to how funds can or cannot be used. He expressed pleasure that the City is going to have a welcome center that will house public restrooms, the Chamber of Commerce and several other organizations that will benefit Boneyfiddle. He described this legislation as being "the smart and the right thing to do" and expressed his excitement at Council being able to participate.

There being no further questions or comments, the roll was called. **VOTE: ayes 4 – nays 0 The ordinance was passed. ORD. #80-03**

The Clerk gave a **first reading** to an ordinance accepting the settlement agreement entered into by and between the Charging Parties and Respondents in settlement of State Employment Relations Board Case No. 03-ULP-03-0155 and ratify the contract between the City of Portsmouth and Local 1039C, Ohio Council 8 of the American Federation of State, County and Municipal Employees (AFSCME), AFL- CIO for the period of January 1, 2003 through December 31, 2005.

Councilwoman Caudill moved this constitute a first reading.

In response to the President's request for questions or comments, Councilwoman Sydnor saying she felt very strongly about this, said she was opposed due to the fact of what was told to the other bargaining units. Mrs. Sydnor said she felt this contract to provide an increase regardless of how it looks. She said she did not believe this contract to be fair to the other bargaining units.

There being no further questions or comments, the roll was called. **VOTE: ayes 2 (Caudill; Kalb) – nays 2 (Baughman; Sydnor) A first reading was declared.**

The Clerk gave a **first reading** to an ordinance accepting a check in the amount of \$1,991.22 from MWC Fund Account for Arch Insurance Company as payment for damages to police cruiser #113 into General Fund No. 101.000.4931 and appropriating the same into Vehicle Maintenance Line Item No. 101.221.5264.

Councilman Baughman moved to suspend the rule requiring an ordinance be read on three separate dates.

There being no other questions or comments, in response to the President asking if there has not been a lot of damage to police cruisers this year, the Mayor stated the City to have had more than its fair share. When

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING Monday, February 14, 2005 6:00 P.M

The City Council of the City of Portsmouth, Ohio met in regular session on Monday, February 14, 2005, at 6:00 p.m., in the Council Chambers of the Municipal Building.

President of Council, Howard Baughman called the meeting to order. The Pledge of Allegiance to the Flag followed an invocation by Rev. Russell Doyle of the First Christian Church.

Roll Call showed the following members to be present:

Tim Loper	1 st Ward
David Malone	2 nd Ward
Bob Mollette	3 rd Ward
Jerrold Albrecht	4 th Ward
Howard Baughman	5 th Ward
Marty Mohr	6 th Ward

Also present were Mayor James D. Kalb; City Solicitor, David W. Kuhn and City Auditor, M. Trent Williams.

Council dispensed with the reading of the Journals for the special session of January 13, 2005 and the regular session of January 24, 2005, on a motion by Councilman Malone.

Prior to citizens speaking with regard to items on the Agenda the President of Council, addressing everyone in the room, noted the presence of police officers in the chambers and asked, "Have we come to this?" He described the situation as "an embarrassment for all of us". He further stated, "It shows a complete lack of respect for the 20,000 people we represent" calling it "a sad state of affairs that we have to go through". He advised everyone that the following would be a final warning as there will be no others. 1) Anyone who has a cell phone are to "turn them off now", saying anyone who has a cell phone that rings during a meeting will be removed from the building and there will be no other warning. 2) Citizens wishing to address Council with regard to anything on the Agenda, only items pertaining to the legislative or the administrative function of the City of Portsmouth will be in order. 3) Items not on the Agenda – only items pertaining to the legislative or the administrative function of the City of Portsmouth will be in order. Mr. Baughman advised everyone that they would be warned once if those comments deviate from this and if the warning does not suffice the person will be removed from the building. With regard to ward reports, the President, saying this pertains to the people sitting behind the tables, stated, "Section 12 of the rules of Council limits anyone on City Council to five minutes at any one time to speak". He said, "That rule will be enforced". He further advised members of Council that the items to which they will speak will pertain to their respective ward's business or the administrative function of the City of Portsmouth. He said there would be no personal comments. He continued, saying, "You'll be warned once and if you deviate from that you will be removed from the building – that includes everyone here". Mr. Baughman went on to say, "We have some important issues that we are going to be dealing with this year, the most of which is the reduction in funds from the State of Ohio which could cost the City \$1,000,000.00." He said we are going to have to start dealing with that problem now, we're going to have to find a place for City government to do business and this Council should not be ruled by intimidation to deal with these issues. He continued, saying, "It is time to get to work and make this a better place to live because this is where we all live." He reminded those present that everyone who sits behind these tables live here also, saying, "We care about it deeply or we wouldn't be here and you care about it deeply or you wouldn't be here." He finished his remarks by expressing his thanks and appreciation.

Councilman Mollette said he heard from a constituent of the 3rd ward who had talked with the Solicitor regarding conduct at the last meeting and the disturbance of a lawful meeting and said he would like to add that issue to the Agenda. It was noted that to add this to the agenda it would have to be in the form of an ordinance and in writing. Mr. Mollette said that he thought since everybody had received the answer in their packets that would suffice. After asking is everyone had received this information, the President said he would entertain this if presented in the form of an ordinance, in writing, at the next meeting.

The President, with regard to "add on" legislation, said he has spoken to the Mayor and the Auditor about this issue. He noted there to have been two items to be added to the Agenda in the packets and will be give consideration only because they were in the packets. The President stated that as far as he is concerned, any legislation that is brought to this Council on the day of the meeting is out of order unless it is a "dire emergency". He said he made an error at the last meeting and will deal with that this evening. The President said he takes full responsibility for the fact that an ordinance for a sewage bond issue without giving the citizens an opportunity to speak with regard to the legislation. He stated this to be part of the problem and the danger of add-on legislation that was not on the Agenda.

Vice President Mohr made a motion to add to the Agenda legislation that will authorize entering into a contract with a private firm to do the annual State audit.

Councilman Mollette asked if this is something that is indentured by the City of Portsmouth. The President advised that it is by the Community Development Department. The Mayor confirmed that to be true. Mr. Mollette said he knew that at one time the City turned block grants over to other parties. He then considered that he might be thinking of the "revolving credit". The President asked him if he were referring to the Revolving Loan Fund. Mr. Mollette asked again if this is something that is administered through the City. The President replied in the affirmative and again noted this action to be carried out by the Community Development Department. The President also responded in the affirmative when Mr. Mollette asked if what we were doing is accepting money from the State.

There being no further questions or comments, the roll was called. **VOTE: ayes 6 – nays 0 The rule was suspended.**

Councilman Malone made a motion to pass the ordinance.

The Auditor stated that in light of some of the discussion, he said he asked the State Auditor last year about the City's appropriation procedure, noting his office has always done the appropriation for grant funds given the authority by the ORC and by ordinances in the past, requested Council amend this ordinance to state, "including appropriations of \$146,000.00, in order to show that Council did appropriate the funds. Mr. Williams stated that his office had been appropriating the grant funds as they were received and felt this being added to the ordinance would suffice for an appropriation.

Vice President Mohr made a motion to amend the ordinance in accordance with the Auditor's request. The Auditor repeated the amendment, reading the line to read as, "to carry out the provisions, including appropriation of \$146,000.00. Mr. Williams asked an employee of the Community Development Department if the \$146,000.00 was still the correct amount and was advised that it was.

At the request of the President, the roll was called. **VOTE: ayes 6 – nays 0 The ordinance was amended.**

At the request of the President, the roll was called on the motion to pass. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #16-05**

STATEMENTS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Teresa Mollette – 1905 Franklin Blvd. read a letter she has prepared to send to the Solicitor requesting the repeal of Ordinance #80 of 2003 regarding a contract with Southern Ohio Growth Partnership. In the letter she read the motions and actions taken by Council in passing the ordinance. She claimed the ordinance to have been passed in violation of the City Charter, Chapter 121.01 "Power and Authority of Contract". She read from the chapter, which said, "Council shall not authorize the making of any contract which is not to go into full operation during the term for which the member of such Council with the longest term are elected." She claimed the terms of the 1st, 3rd, and 5th wards to expire on December 31, 2005 and the 2nd, 4th, and 6th wards to expire on December 31, 2003. She claimed the earliest this ordinance could have been passed was after January 1, 2004 and claimed this ordinance to be invalid and had to be resubmitted to Council for review and written recommendation. She claimed that ordinance could have saved the City an amount greater than 2.5 million dollars over 20 years. Noting the recent water increase because the City "didn't have the funds", she said, "We could have made it on this contract" and claimed this to be a way for the City to get its money back.

She reported also having presented a letter to Police Chief Horner requesting an investigation, referencing ORC Section 29.2103 – Intimidation. Mrs. Mollette claimed Councilman Mohr, as a result of the January 24, 2005 meeting, made remarks about her in an effort to intimidate her because she was and still is a witness to an injunction that was filed by her husband and herself against the City Council that was seated at the time of the 2002 purchase of the Marting's property. She claimed that in a conversation with the Marting's Foundation Mr. Mohr claimed she was standing in the way of a plan he himself is orchestrating with Mr. Johnson in the disbursement of funds "with the Foundation back to the City". She claimed Mr. Mohr is trying to intimidate her into "backing out of the appeal". She claimed that following the January 24th meeting of City Council, "Mr. Mohr verbally expressed to several residents that I was the stupid Mollette woman." Mr. Mollette claimed this to be an attempt to discredit her publicly with the end result being intimidation. She also claimed Mr. Mohr to have contacted her attorney in an attempt to obtain his services for the City. She said her attorney advised Mr. Mohr that the Mollettes would have to release him in order for him to be able to perform the duties associated with the Marting's Foundation. She said her attorney contacted her to see if she would be interested in releasing him of his services in this case and for him to represent the City for resolution of the case. She said she refused and stated she was concerned about Mr. Mohr contacting her attorney when the City was already being represented and questioned how Mr. Mohr could contact another attorney without the approval of Council. She also claimed Mr. Mohr to have called her at 11:20 p.m. "screaming; hollering; threatening and cursing me". She said she tried to reason with him but he threatened to stay on the phone. She said she does not like to leave her phone off the hook due to the health of her mom and her husband's parents. She called this intimidation and the party was guilty of intimidation of the third degree.

Richard Savage – 5333 Gallia Street began relating an incident involving a "pack of dogs" attacking a deer. Mr. Savage, when asked by the Council President if this were something that he could address either to the Chief of Police or the Mayor, Mr. Savage said he felt it should be addressed to everybody. The President advised Mr. Savage that it is our responsibility to do legislative and administrative and if he has a concern about

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING

Monday, February 28, 2005

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on Monday, February 28, 2005, at 6:00 p.m., in the Council Chambers of the Municipal Building.

President of Council, Howard Baughman called the meeting to order. The Pledge of Allegiance to the Flag followed a moment of silent prayer.

Roll Call showed the following members to be present:

Tim Loper	1 st Ward
David Malone	2 nd Ward
Bob Mollette	3 rd Ward
Jerrold Albrecht	4 th Ward
Howard Baughman	5 th Ward
Marty Mohr	6 th Ward

Also present were Mayor James D. Kalb; City Solicitor, David W. Kuhn and City Auditor, M. Trent Williams.

There was no Journal entry available for reading and disposal.

Vice President Mohr made a motion to remove from the table an ordinance accepting the offer from the Marting's Foundation. The motion carried viva voce. **VOTE: ayes 6 – nays 0** The ordinance was added to the Agenda as Item "7k".

Ord. re-
moved fro
table

STATEMENTS FROM CITIZENS ON ITEMS ON THE AGENDA

The President reminded everyone that his statement from the last meeting still applies.

Lee Scott – 832 Gallia Street announced that he has filed a taxpayers suit today and reiterated previous remarks he has made with regard to his feeling that the taxpayers have not been represented in the purchase of the Marting's Building. He read the motions from this suit and suggested that the item regarding acceptance of the Foundation's offer be kept on the table until the people can actually have their say.

Harald Daub – 1221 – 22nd Street said he has submitted a letter to the Solicitor questioning Mr. Baughman's conflict of interest with regard to the Marting's issue. In response to Mr. Daub asking the Solicitor if he had an answer ready for him yet, the President advised Mr. Daub that concern would be addressed. Mr. Daub claimed the Foundation to be trying to "lock" the City in so that once money was spent on the Marting building the high school property would be gone and the City wouldn't be able to build a new building and would be stuck with a 140 year old structure. He also claimed the Marting Building would take "millions and millions" of dollars to renovate, claiming the "citizens of Portsmouth don't want a old City building they want a new City building". Mr. Daub reiterated remarks he made at previous meetings regarding his opinion regarding the Marting's Foundation offer and the former N&W site. Mr. Daub also expressed his opinion that no one is going to purchase the annex building saying that developers want new buildings with only one story. Mr. Daub stated, "I say build a new City building on the PHS site, take all that area over there and start us a new downtown. Let's redevelop Portsmouth lets not get stuck and hung up in this old downtown lets redevelop, lets start a whole new City complex, lets get over in that blighted area on John Street, use your eminent domain power and use some sense and go over there and take that property and start developing it and you will have some developers come in here, you'll have some department stores that want to come in here and build and locate they don't want these old buildings."

James Wilson – 1394-16th St. advised Council that he had earlier turned over some petitions to the City Clerk that were signed by residents who did not want the Marting's building.

Dee Penix – 1708 Hutchins St. referred to a full-page ad in the Portsmouth Daily Times by the Marting's Foundation and described it as "fuzzy math". Mrs. Penix said it all still comes down to the initial offer and reiterated previous remarks with regard to the Foundation telling the City how the money can be spent. Noting that the ad stated that Judge Marshall had not made any order that the Foundation pay back any money, it was her recollection that the Judge ruled the purchase null and void and interpreted that to mean, "they have the building, we have the money". She also claimed that the only money the City was ever going to receive from the Foundation was the \$200,000.00, which was paid from proceeds from the investment. Mrs. Penix stated that it seems the purchase was made before the issue was before Council and asked how a Foundation that had no financial activity from 1997 until June of 2002 authorize a person to "look in an investments for the Portsmouth City Center" on May 10th 2002. She noted this to be 19 days before the purchase contract was signed. She questioned how they could do this if they had no money to invest. Mrs. Penix further noted this date to be before Mr. Finn faxed the Mayor the feasibility summary on May 13th and before the issuance of his final report on May 20th, noting the purchase of the building to have been approved on May 29th and signed the same day.

DAYTON LEGAL BLANK, INC.

Stating he had a lot of respect for the Chief of Police, said one of his biggest concerns is accountability and claimed there to be a lot of issues where there is never any accountability. With regard to leadership he said elected officials must represent the people and if 95% of the people who elected you say they don't want something, those wishes should be respected.

Thanked everyone for their comments tonight.

4th Ward Councilman Albrecht reported having notified the Health Department of a rodent problem on Armstrong Place.

5th Ward President Baughman reported having passed on his ward concerns to the appropriate department.

Said he looked forward to working with everyone.

6th Ward Vice President Mohr agreed with Councilman Malone's remarks. He also thanked the Chief of Police, saying he also felt the effects of the downslide of the community, noting that his place of business was broken into twice during this past weekend. He said there is a lot of hate here and it is important that the community move forward.

The Solicitor, in response to remarks made by Mr. Daub regarding any conflict of interest Mr. Baughman might have, stated it to be his understanding that Mr. Baughman's grandmother was a sister to Clay Johnson's grandmother and that was not a close enough relationship to constitute a conflict of interest. In response to Mr. Daub speaking from the audience, the Solicitor advised that to be a conflict the relationship would have to be a brother, sister or someone who is living in your home and you are supporting. Mr. Daub disagreed and said he would like to see where the Solicitor "got that ruling". Mr. Kuhn advised him that it was his ruling and as the Solicitor he makes those rulings, noting this to be a charter city and that is the rule in the State of Ohio.

With regard to new law suits against the City and filed by Mr. Scott today seeking, not only monetary damages but also the return of levied tax monies, Mr. Kuhn said this information will be forwarded to the City's tax liability insurance company and will be handled like any other lawsuit. He advised Council that when they are served they would not have to do anything because the response will be filed within the allotted time limit.

Noting Mrs. Mollette having given him a letter at the last meeting after first reading it publicly, the Solicitor said he would, at this time, like to respond to it. He noted that her letter basically ended with the statement that Ordinance #80 of 2003 was invalid and must be resubmitted to Council for review. Referring to a copy of the ordinance, which Mrs. Mollette had attached to her letter, the Solicitor read the preamble to the ordinance which said: "Authorizing the Mayor to renew an existing twenty-year contract effective November 20, 2006 through November 20, 2026 with Southern Ohio Growth Partnership for the purpose of furnishing water to various industrial sites owned by said SOGP." Mr. Kuhn then read the pertinent parts of his letter responding to Mrs. Mollette, which said: "Ordinance #80 of 2003 authorized the Mayor to renew an existing twenty-year contract with Southern Ohio Growth Partnership. The renewal to be effective beginning November 20, 2006. Since the ordinance was enacted on August 25, 2003, you concluded that it was invalid based upon the city charter and codified ordinances prohibition that 'Council shall not authorize the making of any contract which will not go into full operation during the term for which the members of such Council with the longest term are elected'. In as much as the longest term of any Councilmember at the time this ordinance was enacted was to expire on December 31, 2005 and since the renewal of the existing contract was to be effective beginning November 20, 2006, you concluded that 'Ordinance #80 - 2003 is invalid and must be resubmitted to Council for review'. Your conclusion is erroneous and the reason appears in your very letter. You correctly note that the ordinance authorizes the renewal of an existing contract yet the authority that you quote prohibits the making of any contract, which is not to go into full operation during the longest term of any current Councilmember. The prohibition has nothing to do with renewing an existing contract but rather the prohibition is against a future contract." The Solicitor stated for that reason Ordinance #80 of 2003 is valid. He advised Mrs. Mollette that she could pick up a copy of the letter and advised the media that copies were also available for them.

The Solicitor also advised that his office is looking at the Harold Pack complaint and have been for some time. He said he would get with the Chief of Police, noting the complaint has to do with a federal firearms (*could not discern due to someone coughing*), that requires daily firearms sales be reported to the Police Department.

He agreed with either conference session or something similar to discuss initial matters that go into the preparation of legislation. He said it would certainly give his office some direction on how to draft ordinances.

The Auditor, with regard to the rental-licensing fee, suggested this issue be brought up either for some sort of action and if not passed an ordinance to adjust the budget would be necessary.

With regard to payouts to retiring firman, the Auditor said this couldn't be brought to Council at this point because action is currently being taken to deal with that situation. He said it may need at some point to come before Council but not at this time. He said as a result of all of these things and things from the past that

The City of Portsmouth

"Where the Ohio and Scioto Meet"

Department of Law
Municipal Building

Room 22
728 Second Street
Portsmouth, Ohio 45662

Telephone: (740) 353-5229
Fax: (740) 353-0136

David W. Kuhn
City Solicitor



State of Ohio

February 28, 2005

Teresa K. Mollette
1705 Franklin Blvd.
Portsmouth, OH 45662

Re: Your February 1, 2005 letter on Ordinance No. 80 (2003)

Dear Mrs. Mollette:

Your captioned letter was hand-delivered to me at the City Council meeting on February 14, 2 weeks after it was dated. Since you chose to read it to the public and the media at the meeting, I will do the same with this reply.

Ordinance No. 80 (2003) authorized the Mayor to renew an existing twenty year contract with Southern Ohio Growth Partnership, the renewal to be effective beginning November 20, 2006. Since the ordinance was enacted on August 25, 2003, you concluded that it was invalid, based upon the City Charter and Codified Ordinance prohibition that "Council shall not authorize the making of any contract which will not go into full operation during the term for which the members of such Council with the longest term are elected." Inasmuch as the longest term of any Council member, at the time this ordinance was enacted, was to expire on December 31, 2005, and since the renewal of the existing contract was to be effective beginning November 20, 2006, you concluded that "Ordinance #80-03 is invalid and must be resubmitted to Council for review." Your conclusion is erroneous, and the reason appears in your very letter.

You correctly note that the ordinance authorizes the renewal of an existing contract, yet the authority you quote, prohibits the making of any contract which is not to go into full operation during the longest term of any current Council member. The prohibition has nothing to do with renewing an existing contract, but rather the prohibition is against making a future contract.

For this reason, Ordinance No. 80 (2003) is valid.

Very truly yours,

David W. Kuhn
City Solicitor

cc: City Council
Media