

MINUTES – REGULAR SESSION

PORTSMOUTH CITY COUNCIL MEETING

Monday, May 23, 2005

6:00 P.M.

The City Council of the City of Portsmouth, Ohio met in regular session on Monday, May 23, 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.

Council dispensed with the reading of the Journal for the regular session of May 9, 2005, on a motion by Councilman Malone.

Vice President Mohr made a motion to remove Item “8” from the Agenda.

Councilman Mollette objected to the removal and restated his objections as previously expressed at the May 9th meeting. Vice President Mohr, noting conference sessions will begin at the first meeting in June, a constituent has a problem and would like to address Council, they can do so by contacting their Councilperson or the Mayor in writing, which will be forwarded to the President of Council. He said it would be up to Council, at that time, to determine whether or not that person could speak during the conference session. He stated it to be the Councilman’s job to address these type of issues. Mr. Mohr cited the motorcycle club as an example, saying that had they addressed this problem to someone beforehand they would not of had to speak about it before Council. Mr. Mohr said there was a lot of things being spoken before Council which has no business being said and noted this to be one of the few communities in the United States that allows that to happen. He said he felt the public had “used up their rights” and that Council is not taking away their rights.

A gentleman in the back of the room stood up and began to make comments. After being requested by the President to sit down and be quite or he would be asked to leave, the gentleman chose not to abide by the request and was asked to leave the building.

Vice President Mohr noted this is not taking away the public’s right to speak but rather is taking away their right to speak during the legislative part of the meeting. Councilman Mollette, above the voice of a member of the audience who was protesting, expressed his biggest concern as being the need to “set an environment” where people feel they can speak and he felt the environment that Council needs to promote is one that makes a citizen comfortable when addressing Council. He said he felt Council “needs to take criticism” saying that is a part of the job and noted there to be some valid points that need to be addressed. The President advised Councilman Mollette that everything he has just noted can be addressed on “Items on the Agenda” and noted that this item is written in stone and needs to be on the agenda. He also noted that with the upcoming conference sessions citizens would have an ample opportunity to speak. The President further noted there to be six Council members, as well as the Mayor, the Auditor and the Solicitor, to whom citizens can address their concerns. Councilman Loper saying it seems like the City just came out of a hostile environment, most of which concerned the podium and people speaking on things not on the agenda and addressing City Council, said the environment for the past few months have been great in this room and asked why time would be taken now to create another hostile environment. Mr. Loper said he did not understand that and needed someone to explain it to him.

A lady in the audience stood up and began addressing Council. Repeated requests by the President of Council for her to be seated and be quite went unheeded thus causing the President to request the officer on duty to escort her from the building. Several other individuals who also decided to leave but not without first expressing themselves verbally were also asked to leave the building and not return this evening.

Councilman Malone said he was not at the last meeting but listened to it on the radio and understood the reasoning for this conversation this evening and acknowledged that he was subjected to a verbal lambasting at the last meeting he attended. He stated, however, that he did not agree with it and felt it to be a shame that Council has to continue to address the issue of personal references being expressed. He said he felt there to be rules of order available that can be enforced, as they are this evening. Mr. Malone asked that item “8” not be removed from the Agenda for his sake because he has broad shoulders and can take criticism. He said he does not take anything personally that is directed at him but instead takes it “with a grain of salt” and if the person

talking is speaking to an agenda issue he listens to it, otherwise he doesn't put any credence to it. He said he did not think it is necessary to create another hostile environment. Councilman Mollette, noting the lady speaking on behalf of Adelpia and the gentleman who wanted to know what to do with his grass clippings had made very good comments and this is Council's way of getting information from citizens. It was his opinion that removing item "8" from the agenda would be a mistake and "uncalled for". Vice President Mohr said the purpose of removing item "8" is because of what just happened. He said there is not reason for "outbursts" to happen. Mr. Mohr acknowledged that citizens will still be given a chance to speak but it just won't be during the legislative part of the meeting. He said all the issues expressed by Councilman Mollette, ie budget, etc., will be given three readings and the public will have three opportunities to address those issues. He said any other issues that are not on the agenda, including personal issues, "doesn't need to happen". To Councilman Mollette, Mr. Mohr pointed out that just this evening as members of Council were getting ready for the meeting and not discussing anything at all that was on the agenda, the gentleman in the back burst in to photograph everyone and told them he was going to put them on the internet because we were breaking the Sunshine Law just because there were four members of Council standing there. Mr. Mohr expressed his assumption that the gentleman waited until Mr. Malone came in to make sure there were four members present. He stated those type of things to not be uncalled for and not necessary and should not happen, noting it to not happen anywhere else in the country. Councilman Mollette, with regard to someone going back into the office, said that is not a part of this meeting and is not even an issue, saying "You can't use that as an excuse to take away the citizen's right to speak on things not on the agenda". Mr. Mollette continued, saying, "By allowing by not allowing them to be a part of this City Council meeting you're saying that you don't understand why people get upset. It's a perfect good reason why people get upset if you're saying that 'hey, I don't want your comments and I don't want you to be a part of this meeting'". He called this a "serious accusation" and this to be a "serious action" that is being considered. Vice President Mohr advised Councilman Mohr that this action has nothing to do with comments on things on the agenda but rather comments on those things that are not on the agenda. Mr. Mohr said Council "doesn't care" about comments being made about items on the agenda, saying those things have to be taken and should be taken but the issue is about items not on the agenda. Councilman Mollette said he was not missing that point but the point he is missing is why "it can't be controlled". Noting the manner in which the President "performed" this evening, Mr. Mollette said he did not see any reason why "it can't be controlled", saying, "You can't use the citizens time here to speak as a reason to not give them that right". He further stated, "The way you get respect is to give respect". Councilman Loper asked if a set of rules can be drafted by which the citizens must comply and if they don't adhere to them, they can be removed. The President acknowledged that to be an alternative. Mr. Loper also suggested that perhaps it might be necessary to set a certain length of time that the offender would not be allowed back in Council chambers if they continue being disruptive after having been called to order, however, he still opposed removing the item from the agenda.

There being no further questions or comments, at the request of the President, the roll was called. **VOTE: ayes 2 (Baughman; Mohr) – nays 4 (Loper; Malone; Mollette; Albrecht) The motion failed.**

STATEMENTS FROM CITIZENS ON ITEMS ON THE AGENDA

The President reminded everyone that they will be held to the requirements for speaking and advised the other members of Council that they have the ability to call for a point of order at any time, if anyone of them thinks he may have missed something.

Teresa Mollette 1705 Franklin Blvd., began to address the issue of the public speaking at Council meetings. The President interrupted her to advise her that she was not speaking with regard to the legislative item listed on the agenda. Mrs. Mollette contended that the agenda does not say that but does say "any item on the agenda". The President said "I am ruling that way" to which Mrs. Mollette, noted item "8" to be on the agenda, therefore she felt she could speak to that item. The President again stated that this time was for speaking on legislative matters to which Mrs. Mollette, although disagreeing, stated that she would then speak during item "8" on the agenda.

LEGISLATION

The Clerk gave a **third reading** to an ordinance authorizing the employment of Schroeder, Maundrell, Barbieri and Powers the defense firm that represents the City in litigation to represent the City in the complaint filed March 28, 2005, Elmo Keller and Jacob Faul, Jr. vs. City of Portsmouth, Case No. 05-CIH-146, Scioto County Common Pleas Court, and further authorizing the transfer and additional appropriation of \$10,000.00 from the General Fund into Legal Attorney Fees Line Item No. 101.105.5232.

Councilman Malone made a motion to pass the ordinance.

Councilman Mollette asked the Solicitor if there has been any conversation or discussion from "the other parties" in order to try to settle this matter. The Solicitor advised Mr. Mollette that his office provided Council with a memo today, which accompanied a "motion to dismiss" challenging the suit based on the Statute of Limitations. The Solicitor reiterated his explanation with regard to the Statute and how it applied to this case. Mr. Kuhn stated that it would not be a good idea to enter into settlement discussions until the court rules on this motion.

There being no further questions or comments, the roll was called. **VOTE: ayes 6 – nays 0 The ordinance was passed. ORD. #46-05**

STATEMENTS FROM CITIZENS ON ITEMS NOT ON THE AGENDA

Crystal Gillium representing Adelpia Cable, advised Council that Adelpia as drafted an ordinance for Council to pass which would accept the settlement being offered by Adelpia with regard to their appeal to the FCC. Ms. Gillium reiterated remarks she has made at the last two Council meetings and cited reasons why it would be beneficial for the City to agree to their proposed settlement.

Teresa Mollette – 1705 Franklin Blvd. thanked those members of Council who voted against removing item “8” from the agenda. She contended that the public had a right during item “6” to address anything on the agenda including the Mayor’s report. Speaking about her father she claimed his “hard work” is being “dishonored” by a few men on this Council. Reading excerpts from the U. S. Constitution regarding freedom of speech and freedom of the press, she accused some members of Council of attempting to remove freedom of speech from the citizens of Portsmouth. Mrs. Mollette claimed, “one of the most important functions is that decision making at all levels is preceded by discussion and consideration of a representative range of view.” She further noted that a conclusion made after sufficient discussion is likely to be a better one. She further noted it to be no accident that freedom of speech is protected in the first amendment of the Bill of Rights, saying, “Here in Portsmouth, Ohio, three Councilmen attempted to deprive the citizens their right of freedom of speech endowed to them by our forefathers.” She said citizens who are expected to obey the laws should have a voice in making those laws and taxpayers should have a voice with regard to the amount of the tax they pay and the way it is spent. She requested Council to “not allow poor choices by a few to eliminate the opportunity for this community’s democratic right of freedom of speech”. She accused some of the member of Council of threatening to abridge and/or censor this community’s constitutional rights of freedom of speech during Council meetings. Mrs. Mollette expressed her views with regard to freedom of speech and quoted Justice Hugo L. Black. Mrs. Mollette’s time having expired she returned to her seat.

Rich Noel – 256 Dunlap Road stated that this week he reviewed Council’s rules, which are posted in the lobby. He read portions of rule #15, regarding suspending the rule to give three readings to ordinances. He then referred to Rule 28, which states: “In all cases not provided for in or by these rules, the Council shall be guided, where pertinent and in the order named, by:” and lists “a” as being the Constitution of the United States and the Acts of Congress. Mr. Noel also claimed it to state that the Constitution of the United States will not be abridged and that the Revised Code of the State of Ohio will not be abridged and the general rules of the deliberative bodies as laid down in “Robert’s Rules of Order”. He said, “it is plain in there that we have a right to speak”. Mr. Noel said the first order in Robert’s Rules states, “No one wants a hear a chairman of being a tyrant in the chair”, saying he was not making an accusation toward the President of Council but claimed this to have happened in the President’s absence. Mr. Noel said he served in the army to have the right to return here and talk as long as he behaves himself. He acknowledged that if he acts up the President has the right to throw him out of the meeting. To Councilman Malone he expressed sympathy with his position but noted that when Council brings a lot of this on themselves he does not feel sorry for them. He claimed to have the right to talk as long as personalities were not addressed. He said he thought Council should follow “Robert’s Rules of Order”. Mr. Noel claimed this whole thing to begin when he was verbally abused when he was sitting in the second row and requested Council to “put me out” if he ever became abusive to any of them.

Harald Daub – 1221-22nd Street said he wanted to correct one thing stated by the President. He advised Mr. Baughman that he had stated that item “8” was not on the agenda but when a vote was taken to remove it from the agenda the motion failed therefore it was actually made a part of the agenda. He said people should have actually been allowed to speak on it “since it was turned down and it was on the agenda” noting that it doesn’t say “legislative”. Mr. Daub stated that citizens speaking have brought a lot of good information to this Council. With regard to the proposed ordinance on “Front Yard Parking”, he said last Sunday he counted twelve cars parked in yards on Scioto Trail and claimed that to be because of the street construction. He asked if those people would have been ticketed if the proposed ordinance had been passed. He said he knows that Council does not always have time to “research things” and he felt it to be good that citizens bring up things like that. He further noted there to be budget cuts that could be made and a lot of things that could be done to save the City money. Mr. Daub said he was surprised that Council “don’t want to let people speak” saying, “Maybe perhaps Mr. Mohr next he will be wanting to ban the Portsmouth Daily Times out of here” and further saying, “Maybe that wouldn’t be a bad idea”. Mr. Daub was reminded by the chair to not make any personal references, however, Mr. Daub claimed to not have done so. The President noted that he did make a personal reference when he mentioned Mr. Mohr but Mr. Daub claimed to not have said anything bad about Mr. Mohr. The President asked that he not argue about it. Mr. Daub continued to talk and when advised that using Mr. Mohr’s name was a personal reference and was asked to sit down. Mr. Daub continued to speak thus causing the Vice President to request the officer on duty to escort Mr. Daub from the room. When Mr. Daub continued to make remarks, the President asked that he leave the building. Mr. Daub continued to make remarks to the President of Council and the Managing Editor of the Daily Times as he was escorted from the room.

Miscellaneous business and reports:

City Clerk’s Report

1. Oath of Office
Margaret Apel Miller for position of Municipal Court Magistrate

The Clerk’s report was received, filed and made a part of the record, on a motion by Vice President Mohr.

Mayor's Report

1. Advised Council that the tax budget has been prepared and will be presented at the next meeting and is planning on having a public hearing on the budget at that meeting.
2. Advised Council that legislation will be presented at the next meeting to request additional money for the purchase of civil service tests.
3. Legislation will also be presented at the next meeting with regard to Adelphia's request to settle on their appeal to the FCC.

The Mayor's report was received, filed and made a part of the record, on a motion by Councilman Malone.

President's Report

1. Reported having spoken with Crystal Gilliam and promised her something would be presented to Council for their consideration at the next meeting.
2. Said he felt it was time to have "an aggressive agenda" with regard to some issue that Council needs to tackle. He identified these issues as moving out of this building, noting the City to have an agreement on a building and he felt it time to take the necessary steps to have a quality place for employees and the citizens who come to the City building to do business. He said this will be a discussion item on the conference agenda at the first meeting in June. He further advised that in the next couple of conference meetings the three ordinances recently put on the table will be discussed, saying he felt it to be time to have a public hearing on the rental housing issue. He said he hoped the program that has been put together will be agreeable to most people. The next issue to be considered will be the matter of increasing water deposits. With regard to front yard parking, he stated this to also be an issue that needs to be addressed but acknowledged that the ordinance would need to be amended. He noted these to all be issues that deal with neighborhoods and the City of Portsmouth. He expressed his feeling that a better, prettier and quality place to live is everyone's goal and he felt these ordinances deal with that goal. He said there will be a public hearing on the rental licensing proposal and noted the Mayor has been kind enough to find the money needed to advertise the hearing. He said with Main Streets coming to town in June to assess downtown and Boneyfiddle, we have the opportunity to bring more people downtown, noting that government offices are a key part of the Main Street Plan and he felt keeping government downtown in a quality place encourages investment. He further stated his feeling that these are issues which Council and the administration need to look at in order to move the City ahead to make it a better place to live and to address the issues that he feels are important to Portsmouth's future.
3. Reminded Councilman Loper that he will meet with him next week to discuss Mr. Loper's issues regarding SOGP and the sale of water. He declared this to be a time to move forward and to have a positive influence projected from everyone including those sitting in the audience. He said we all need to deal with why we are here and how we get out of where we are, saying we deserve to have pride in where we live. He continued saying it is necessary to take the necessary steps to move the City to the place we belong and deserve.

The Mayor's report was received, filed and made a part of the record, on a motion by Councilman Malone.

Miscellaneous business and reports:

1st Ward

Councilman Loper thanked the City officials who worked with him this week helping him with research, noting there will be a lot of things brought to the table in a few weeks. He noted members of Council to have received a memo from him with regard to Ordinances #154 and 156 of 1978 and asked that it be reviewed prior to the upcoming conference session. He stated that to his knowledge these ordinances have not been amended, thus 5% of the elected City officials are to be on the board of trustees of SOGP and requested these appointments be made as soon as possible.

2nd Ward

Councilman Malone had nothing to report.

3rd Ward

Councilman Mollette thanked the Traffic Committee for giving consideration to a problem he mentioned at the last Council meeting.

Acknowledged having received information in his packet from the President with regard to rental licensing that has been enacted in other cities, noting this information to be very helpful in recognizing a purpose behind the plan.

Expressed his interest in hearing a discussion with regard to a new municipal building, saying there is a lot of unanswered questions and his biggest concern is how it will be paid.

Thanked those residents who attend these meetings and encouraged them to contact their respective representatives, saying this is the best way to help Council see the things that they don't see from just one person's perspective.

4th Ward Councilman Albrecht had nothing to report.

5th Ward President Baughman welcomed back Mr. Malone.

6th Ward Vice President Mohr department heads who assisted him with a problem that was of great concern.

With regard to the firemen's suit, the Solicitor reiterated the purpose for filing for a motion to dismiss. He stated that the courts would probably rule on that motion in thirty to sixty days and then we would know whether or not the City would need to consider a settlement for payment. He stated that, on the other hand, if the case is dismissed then the firemen would have to file an appeal.

Reported having prepared some memos today, one of which deals with the preparation of legislation. Mr. Kuhn noted that he has received a request from one Councilperson to prepare an ordinance and Adelpia has also prepared an ordinance and it seems like requests are coming from all different sources, which really shows the need for a conference session. He said he also addressed Adelpia's proposed settlement and asked Council to read that memo and then reread the May 6th letter from Walter and Haverfield. He noted that the letter does mention an overcharge of \$0.32 a month at the beginning of March of this year.

Reported having met this morning with Attorney Mike Mearan who represents the owners of the Adelpia building. He said he saw the deed that has been signed over to the City, however it has not yet been delivered because of more things that need to be done since the property was owned in a trust.

The Auditor acknowledged having provided Council with a report tonight that they can review when they have time. He said the report will show the delinquent real estate taxes and delinquent special assessments on properties within the City of Portsmouth. He said he has contacted the County Prosecutor's Office to see if action is in deed being pursued and steps are being taken to foreclose on some of these older outstanding delinquent properties. He noted the dollar amount of the combined delinquencies to be about 1.2 million owed city-wide and the City's share of the real estate taxes would be \$109,000.00 but the total owed on the delinquent assessments would belong entirely to the City.

In closing the President advised the Mayor that Council would like to receive those items for consideration at the conference session a week before the meeting. He said he felt Council deserved more than two days to consider legislative requests.

The meeting adjourned at 6:52 p.m., on a motion by Vice President Mohr.

City Clerk

President of Council