

Motion to approve the minutes of the November 19, 2012 Budget Work Session as amended was moved by Burgess, seconded by Broadwell.

Soucy noted that David Ashenhurst was also present at the Budget works session.

Roll Call: 7 Ayes 0 Nays Motion Carried

(d) Approval of Minutes – Budgeted Work Session – November 20, 2012.

Motion to approve the minutes of the November 19, 2012 Budget Work Session as amended was moved by Broadwell, seconded by Burgess.

Roll Call: 7 Ayes 0 Nays Motion Carried

(e) Discuss and consider authorizing the City Manager to sign an application supporting and acknowledging a request for a TREX transfer of a liquor permit to Magpie Pizza.

City Manager Norenberg introduced the TREX application to the members of Council. An explanation outlining the process for approving Trex applications was provided as well.

Motion to authorize the City Manager to sign an application supporting and acknowledging a request for a TREX transfer of a liquor permit to Magpie Pizza was moved by Soucy, seconded by Meadows.

Roll Call: 7 Ayes 0 Nays Motion Carried

(f) Motion not to request a hearing with the Ohio Division of Liquor Control regarding a request for a new liquor license from Dollar General located at 544 West College Street.

Motion not to request a hearing with the Ohio Division of Liquor Control regarding a request for a new liquor license from Dollar General located at 544 West College Street was moved by Soucy, seconded by Meadows.

Mucciolo asked if the Police Department had reviewed the application. The City manager noted that there was no objection from the Police Chief at this time. Since this was the first liquor license at this location it would take at least six months to develop a history that would allow them to determine whether a hearing would be necessary. Norenberg added that this was true of the Magpie application as well.

Rimbert asked if Dollar General had withdrawn its application at this time. Norenberg remarked that he was not made aware of a change in status of the applicant. Rimbert remarked that it was his understanding that since the location in question didn't have the necessary square footage that they would not be picking up the liquor license afterall.

Burgess asked why Council would endorse a liquor permit for a location that no longer wanted one. Severs remarked that the action item before Council is to indicate whether or not it would like to hold a hearing on the permit. Since there isn't a plausible cause to reject the permit, his legal opinion would be not to request a hearing. The Department of Liquor Control is responsible for determining if the location is suitable for the permit based on the requirements outlined by its Liquor Control board.

Roll Call: 7 Ayes 0 Nays Motion Carried

2. ANY CONCERNS THAT ARE NOT ON THE AGENDA MAY BE BROUGHT TO THE ATTENTION OF COUNCIL AT THIS TIME.

3. OLD BUSINESS:**4. NEW BUSINESS:**

The Presiding officer moved Resolution R12-13 to the top of the agenda.

(C). RESOLUTION No. R12-13 CMS: A Resolution Requesting that Governor John R. Kasich and the Ohio State Laws that Attempt to Pre-empt Local Control over Oil and Natural Gas Extraction, and Begin an Open, Transparent Process of Discussion with the Citizens of Ohio Relative to the Actual Risks and Dangers Inherent in Horizontal Hydraulic Fracturing and Brine Injection Wells in the State of Ohio and Declaring an Emergency. (1st)(E)

The Clerk read the resolution in full.

Motion to approve the resolution on first reading was moved by Mucciolo seconded by Broadwell.

City Manager Norenberg remarked that this resolution has been submitted for approval by Council by a group of concerned citizens. It was noted that members from the Communities for Safe and Sustainable Energy were present to offer their support for this resolution.

Soucy stated that she would support the resolution on first reading but would not support it on emergency. It was her desire to address several statements throughout the resolution, in the form of an amendment at a later time. She added that a number of Council members attended a discussion at the College last night who felt that the fracking industry was evolving so rapidly that Council was not prepared to make quite as absolute a statement as suggested in some of the sections in the resolution. She proposed two options: one that Council pass the resolution on first reading and they address the amendments on second reading, or two that Council attempt to address the amendments on the floor at this time. Presiding Officer Rimbart expressed his preference to address the amendments on second reading. Burgess said what was in front of Council is the original version of the resolution submitted to Council but he recalled seeing a revised version that addressed the concern that he initially raised which is to identify specific laws that would be overturned to stop the Fracking industries attempt to pre-empt local control over oil and natural gas extraction. He advised that he would bring the edited resolution to the next meeting so that they can insert the laws that they intend to request be repealed. Burgess also noted that one of the most contentious issues addressed at a recently attended National League of Cities conference, was that of hydraulic fracturing. After a great deal of deliberation and overcoming unforeseen obstacles the National League of Cities did pass legislation calling on Congress to repeal the exemption that hydraulic fracturing has from the Clean Water Act. At face value this appeared to be a weak response to some people however, by holding hydraulic fracturing to the same rules as everyone else, the passage of this act would effectively shut down much of the hydraulic fracturing industry. He advised that he would bring a copy of that resolution to the next meeting as well.

Mucciolo said when he read this resolution he had considered making amendments to it as well but after further consideration felt that the resolution fundamentally stated exactly what has been expressed over months from the public and from discussions going on within Council. He agreed with Burgess that specific references to the laws needed to be incorporated into the resolution. He felt that if a reference to the particular bill or bills involved were added to the resolution he didn't see how he could have anything other than complete dissatisfaction with the present state of affairs in this State. He recognized that Council didn't have complete information with regard to every policy matter out there, but they had heard repeatedly from members of the public particularly as it relates to SB315 — that removed local control over zoning abilities within the City and created an understaffed bureaucracy that tries its best to maintain what they approved. He understood the desire of some Council members not to stick themselves out too far which is why he asked in an email to members of Council, the Law Director and Planning and Development Director, for information concerning the status of law suits regarding laws that infringe on Home Rule and hearing what rights we have as a City to possibly restrict oil or gas drilling and thereby make what this resolution describes clearer and more pressing to Council.

Following Council deliberation Council heard prepared statements from CSSE members John Elder, 121 Kendal Drive and

during the winter season. Baumann remarked that once they have awarded the contract they will discuss with the contractors how this construction can be done causing the least amount of disruption for the residents. He further observed that South Professor Street was wide enough that they will be able to maintain a work area substantially down the middle of the street with passing traffic down either side; however, due to the narrowness of Morgan Street it may make more sense to close that block to all but local traffic. Rimbart remarked that he hoped residents would be notified. Baumann remarked that notifying the residents was part of the construction process. Rimbart asked if new curbs would be put in on Morgan Street? Baumann stated that there would be select curb replacement were the laterals go over to the homes, but curb replacement was not a part of scope of this contract.

Peterson asked how this project would affect school bus routes if Morgan Street is closed to traffic. Baumann remarked that this will be worked out with the school district. In the past it has been a combination of scheduling bus pickups on the corner and arranging for construction to take place around scheduled bus routes.

A motion to suspend the rules requiring three readings and to elevate the ordinance to an emergency for the reason stated in Section 3 was moved by Burgess and seconded by Peterson.

Roll Call: 7 Ayes 0 Nays Motion Carried
(1st, Suspension of Rules/ Emergency)

Roll Call: 7 Ayes 0 Nays Motion Carried
(1st, Final)

(B). ORDINANCE No. 12-77 AC CMS: An Ordinance Establishing the Process to be Utilized to Determine the Amount of Sick Leave Payment Due the Law Director upon his Retirement and Declaring an Emergency. (1st)(E)

Meadows moved to have the ordinance read by number, title and substantive portions only, seconded by Broadwell.

Roll Call: 7 Ayes 0 Nays Motion Carried

The Clerk read as directed.

Motion to approve the ordinance on first reading was moved by Mucciolo seconded by Burgess.

Talarico stated that based on the Ohio Revised Code 124 and the City of Oberlin's Employee Manual, employees get thirty days paid of sick leave when retiring, regardless of how much sick leave they have left. Regular employees have set hours, so they can use the ORC formula (Salary/ # of hours worked) to determine what the rate of pay will be. The Law Director is different because he receives extraordinary pay and he also has a non-fixed schedule. Talarico noted that he had requested that the ordinance be drafted so that if the files were audited he would have supporting documentation authorizing the payment to be made.

Law Director Severs remarked that this usually wouldn't come before Council but he worked with Sal to draft the ordinance for the reasons previously stated. He made mention that he had been tracking his hours for years for both extraordinary and regular hours. According to his calculations he was able to apply the ORC formula based on working approximately 5 hours a day.

Motion to suspend the rules requiring three readings and to elevate the ordinance to an emergency in order to establish the process to be utilized to calculate the sick leave retirement payout due the Law Director at his retirement" and shall take effect immediately upon passage, was moved by Soucy and seconded by Broadwell.

Roll Call: 7 Ayes 0 Nays Motion Carried
(1st, Suspension of Rules/ Emergency)

Roll Call: 7 Ayes 0 Nays Motion Carried

Burgess asked the Finance Director to provide him with a print out of the utility bills for all City facilities prior to the next meeting. Talarico remarked that he wasn't sure what he was asking for but they could discuss it after the meeting and he will provide him what he needs.

Mucciolo said that there were several line items in the budget that he would like to strike from the budget or to significantly reduce. The items are as follows:

- Reduce the amount budgeted for the merchandise for the concession stand at the Recreation Complex from \$26,000 to \$5,000.
- Reduce the amount budgeted for the website upgrade for the Police Department from \$9,500 to \$3,000.
- Strike the request for the door controls capital project for the Police Department (savings of \$32,000).

An explanation supporting the proposed amendments was provided. Rimbart remarked that he wished that he would have known about these concerns prior to the meeting. Mucciolo recalled that he had raised these concerns at the Budget Work Sessions as well.

Soucy said she would like to speak to both the Police Chief and Recreation Department Head. She felt that the concerns were legitimate but would prefer to allow the departments being impacted before she would agree to any changes. Peterson agreed with comments from Soucy. He added that there were other factors that led to the original consideration to support the concession stand. It was well understood that the concession stand would not generate a great deal of revenue. Rimbart remarked that he was involved in the process of getting the concession stand in place. He agreed that they may not need to have \$26,000 for the merchandise but he felt that it was imperative to keep it open. He argued that when people moved to new communities they looked for two things (if they have a young family), school and recreation. Mucciolo remarked that he didn't see any reason not to keep the concession stand open. He only wished to reduce the amount (\$26,000) used to purchase merchandise.

Norenberg remarked that he hadn't received the final year-end report from this year's season to look at the profit/loss statements for this year. He explained that staff has been talking about ways to control the operational cost for the Recreation Complex and they are still looking at alternatives. He wasn't sure that this was something that needed to be tinkered with at this point or the other two projects mentioned by Councilor Mucciolo. Furthermore, he noted that the costs suggested by the Police Department were only estimates based on estimations from one or two vendors. However, when the time comes staff would appreciate the expertise that Mucciolo brings for the costs associated with upgrading the website. It was also noted that both projects proposed by the Police Department would be paid for out of the Capital Improvement fund rather than the General fund (which is where they were experiencing the biggest problem in terms of revenue).

Burgess remarked that during the work session they talked about the budget deficit that they were in, mainly because of the cuts that they have received from the state. The position that this places the City in is that they go broke year-by-year until they have nothing, or they look for raising revenues. He explained that he couldn't suggest: raising income taxes, going after pilot payments, or other sorts of revenue from non-profits in the community with a clear conscience until he was personally satisfied that he had combed through the budget looking for savings where he could find them. He felt that Mr. Mucciolo's point was well taken and his desire to reduce the concession stand budgeted amount to \$5,000 seemed reasonable to him. Burgess remarked that he was bothered by the request from the Police Department to replace a perfectly good door system with another one that doesn't functionally do anything differently. He felt that regardless of which funds these monies were coming from the spending should still be open to scrutiny.

Soucy said she wanted to make sure that the public understood that this budget had been slashed and worked on very hard by various departments. Facing the fact that they may have to go to the public for some sort of revenue increase and they may need to look at some sort of additional contributions from their non-profits. She didn't want the image to go out there that they hadn't done the work because their administration, various department heads and members of council have worked very hard to cut this budget to the bone. If there is more that they can do great but she wanted to reiterate the fact that people have been working very hard to make a lot of sacrifices within this budget.

Roll Call: 7 Ayes
(1st, Reading)

0 Nays

Motion Carried

5. OTHER NEW BUSINESS: None

6. COUNCIL COMMUNICATIONS:

- (A). Referrals
- (B). Advocacy
- (C). Correspondence
- (D). Reports

Council members Elizabeth Meadows, Scott Broadwell, Bryan Burgess, and Charles Peterson

- Provided an update on the trip to the National League of Cities 2012 Congress of Cities and Exposition in Boston. It was noted that a 15 minute presentation would be put together at a later date to provide an overview of their experience.

Charles Peterson

- Provided an update on the Law Director Search Committee process. It was noted that a target date to hire the new Law Director was tentatively set for March 1st.

Burgess asked when the deadline for the board and commission vacancies would be. The Clerk remarked that she would need to discuss that with the leaders of Council. The initial deadline has already passed but due to a recent resignation and numerous outstanding vacancies the deadline has been extended. A deadline date would be forthcoming.

Soucy asked Broadwell when the nominating committee would be prepared to make appointments. Broadwell noted that the plan was to begin making appointments by the second meeting in December. Broadwell remarked that he will begin meeting with members of the Nominating Committee and Clerk Anderson to start the interviewing process.

Aaron Mucciolo

- Asked if there had been any follow up on his question about the law suits concerning fracking and its infringement on Home Rule. Peterson remarked that there wasn't but he had hoped to hear something about that soon.
- Law Director Severs said based on his research and the current make up of the Ohio Supreme Court and the Ohio statute in question it would be tough.

7. CITY MANAGER'S REPORT:

City Manager Norenberg:

- Drew Councils attention to the press release from the Ohio Development Services Agencies related to the Local Government Innovation Fund. He reminded members of Council that the City had applied for funds for the Fuels Forward Shared Strategies for Oberlin Fleet and it looks like they will receive funding in 2013. He also noted that the Storm Water Study related to setting up the Storm Water Utility didn't qualify for funding, but assured Council that another avenue will be used to get this done.

8. FINANCE DIRECTOR'S REPORT:

Finance Director Talarico:

- Reviewed the 2013 Community Organization Funding Schedule with members of Council. Discussion ensued regarding the procedure followed to make appointments to the committee. Talarico noted that the appointments for the commission will be made at the February 4th meeting.
- Mentioned that the Ohio Municipal League invoice has been received and will be paid if there are no objections. There were no objections at this time.

9. PUBLIC PARTICIPATION: None

10. ADJOURNMENT:

Being that there was no further business to come before Council the meeting adjourned at 9:00 p.m.

Attest:

BELINDA B. ANDERSON, CMC
CLERK OF COUNCIL

SCOTT BROADWELL
PRESIDENT PRO TEM

APPROVED: 01/07/2013

POSTED: 01/08/2013

TO OBERLIN CITY COUNCIL:

GIL MIRANDA, resident at 92 Morgan St. in the city of Oberlin, respectfully asks permission to file an *amicus brief* in support of the rights of City Council

Re: environmental protections from the activity of "fracking"

PRIMA FACIE, the case develops on two levels: a) Municipal home rule; b) Protections contained in the Bill of Rights.

Municipal Home Rule.

Q. Can SB 315 revoke the principle of home rule established in Art. XVIII, Sec. 3 of Ohio's Constitution, that cities may issue ordinances in matters of local police, sanitation, and similar regulations?

A. Art. XVIII, Sec. 3 itself determines that the exercise of local rule cannot conflict with general laws; and current interpretation has it that such laws are the statutes of the state.

Accordingly, it was ruled (1972) that: "An ordinance that attempts to prevent the conduct of an activity regulated by the state exceeds that authority": *Valley News v. Rockside Hideaway Sanitary Landfill, Inc.*, 61 002d 231, 32 OMisc. 135, 289 NE2d 598 (MC)

On the other hand, it was also ruled (1962) that: "A municipal corporation may, under power granted by the constitution, adopt local police regulations, and such power may not be taken away by the legislature, either directly or indirectly. (my emphasis) The validity of a local police regulation depends upon the existence or non-existence of a conflict with the general laws of the state, and not on any question of a state prohibition or preemption of such power": *Columbus v. Glascock*, 117 App. 63, 23 002d 50, NE2d 889.

And (1965): "The words "general laws" as set forth in this section means statutes setting forth police, sanitary or similar regulations (my emphasis) and not statutes which purport only to grant or limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations": *West Jefferson v. Robinson*, 1 OS2d 113, 30 002d 474, 205 NE2d 382.

In conclusion, it appears neither B 315 nor any other statute can revoke the constitutional principle of home rule. The latter is alive and well, albeit limited by statutory rules on police, sanitation, and similar matters.

Bill of Rights.

Q. Can SB 315 or any other statute revoke the guarantees set down in Ohio's constitutional Bill of Rights?

A. The guarantees of Article 1 of the Constitution (Bill of Rights) do not depend on conformity with any other law, therefore the answer is a resounding NO.

Namely:

Sec. 1 - individual right to life, happiness and safety;

Sec. 2 - ban on special privileges and immunities (like the ones SB 315 creates for the fracking industry);

Sec. 16 - Full recourse to redress of injury done to land, goods, person;

Sec. 19a - Limitless liability for damages caused for death by wrongful act, negligence, or default;

Sec. 19b (A) - Recognition of property interests in ground water, lakes, and watercourses;

(C) - idem regarding the reasonable use of the ground water underlying the property owner's land;

(G) - Such rights cannot be impaired by the use of the powers conferred to the state by Article II, Sec. 36 - management of natural resources (my emphasis).

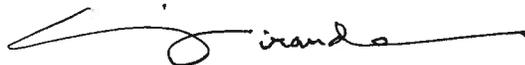
Conclusion.

It seems that:

a) SB 315 Sec. 1509.02 shall be interpreted as having solely conditioned (not revoked) the principle of municipal home rule;

b) SB315 Sec. 1509.07 does not satisfy the guarantees provided by the dispositions of the constitutional Bill of Rights (above).

Faithfully submitted.



Gil Miranda

Bachelor and master's degree in Law, Lisbon Univ. Portugal
Assistant Prof. of Law at same Univ. (1968-1975)

Good evening. My name is John Elder, and I live at 121 Kendal Drive.

My comments this evening are in support of the City of Oberlin regaining local control of the safety and health of its citizen from the oil and gas industry. Not only are other communities in Ohio passing resolutions similar to the one that presented to Council for its consideration, but a bill has been introduced in the Ohio General Assembly – H.B. No. 537 – that would remove from Ohio law the statement that the division of oil and gas resources management has “*sole and exclusive*” authority to regulate gas and oil operations “*that are necessary to protect the health and safety of the public, property and the environment.*” This bill would also excise from Ohio law as presently written the following statement: “*The regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation, and this chapter and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, well stimulation, completing, and operating of gas wells within the state, including site construction and restoration, permitting related to these activities, and the disposal of wastes from these wells.*” Further it would excise the from the authority granted to the director of transportation and local authorities in the relevant sections of the Revised Code this proviso: “*...provided that the authority granted under those sections shall not be exercised in a manner that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations regulated under this chapter.*”

In other words, some of the members of the Ohio House of Representatives are beginning to push back against the corporate over-reach of the oil and gas industry. As was noted earlier this evening on WCPN in comments by a law professor, state law is more likely to be changed if local municipalities also act to reclaim local control – even if their actions now do not have legal standing.

The Oberlin City Council can demonstrate the leadership for which our community is rightly famous by acting now to show that it is not the oil and gas lobby that determines what the health and safety of Oberlin residents requires – we ~~we~~ can and should do that for ourselves.

Thank you for your attention.

(Submitted December 3, 2012)