



Minutes of the Regular City Council Meeting

Held on Monday, August 19, 2013

7:00 p.m.

Executive Session - 6:30 p.m. – Conference Room 2

Purpose: Discuss Pending or Imminent Litigation

1. COUNCIL BUSINESS

(a) Call Regular City Council Meeting to Order and Roll Call – 7:18 p.m.

A regular meeting of the Oberlin City Council was held on Aug 19, 2013 in the Council Chambers of the Oberlin City Hall, located at 85 S. Main Street Oberlin, Ohio. The meeting was called to order at 7:18 p.m., by Presiding Officer Ronnie Rimbart. Roll Call was taken:

Council Members:

Present

Absent

Charles Peterson



Bryan Burgess



Sharon Soucy



Elizabeth Meadows



Scott Broadwell



Aaron Mucciolo



Ronnie Rimbart



Appointees:

Belinda Anderson, Clerk of Council



Jon Clark, Law Director



Eric Norenberg, City Manager



Sal Talarico, Finance Director



(b) Approval of Minutes – Regular City Council Meeting – July 1, 2013.

Motion to approve the minutes of the July 1, 2013 Regular City Council meeting as amended was moved by Meadows, seconded by Broadwell.

Burgess suggested the following corrections:

- Bottom of page 1: Strike Soucy as the person who seconded the motion to approve the minutes, and insert Peterson.

Discussion ensued related to a title error on page 4 of the minutes pertaining to an Update on Reserve Square. The Clerk noted that the title had been stricken from the minutes in the corrected version.

- Soucy asked if the signature on page 10, should say Vice President of Council under her name when she runs a meeting. Clerk Anderson responded that the correct title should read Presiding Officer. However, in this case, the minutes have been revised to reflect Ronnie J. Rimbart, President of Council's signature, since he will be the person signing the minutes.

Roll Call: 7 Ayes

0 Nays

Motion Carried

(c) Approval of Minutes – Regular City Council Meeting – August 5, 2013.

Motion to approve the minutes of the August 5, 2013 Regular City Council meeting as amended was moved by Soucy, seconded by Burgess.

- Page 4: Burgess requested that the following language be added to the minutes as follows:

Dupee reported that of the three employees who knew how to operate the plant, one was on a work-related trip to San Francisco, the other two were on vacation.

- Page 5: Insert language at the bottom of page that says: "Norenberg stated that Staff meetings were held to review the City's response to the outage.

Norenberg suggested that it would be better to refer to the individuals referenced in the first amendment as superintendents instead of as "the three employees who knew how to run the plant". Burgess concurred.

Roll Call: 7 Ayes

0 Nays

Motion Carried

(d) Motion not to request a hearing, relating to the renewing of Alcoholic Beverages Permits for businesses in the City of Oberlin. (Annual Review).

Norenberg outlined the annual process followed by the Department of Commerce Division of Liquor Control, for the purpose of renewing liquor permits in the City of Oberlin. It was further noted that the Police Department has responded with no objections to the renewal of any local permits.

Motion not to request a hearing, for the above stated purpose which was moved by Peterson and seconded by Soucy.

Roll Call: 7 Ayes

0 Nays

Motion Carried

(e) Appointments to Boards and Commissions.

Motion to appoint Pradnya Martz to fill an unexpired term ending on December 31, 2013 was moved by Broadwell, seconded by Mucciolo.

Roll Call: 7 Ayes

0 Nays

Motion Carried

Broadwell also announced current vacancies for the Civil Service Commission, the Underground Railroad Center Implementation Team, as well as upcoming vacancies for 2014.

- (f) Discuss and consider scheduling an Executive Session for September 3rd, 2013 at 6:15 p.m., Re: The Annual Performance Evaluation of the Oberlin Finance Director.

Motion to schedule an Executive Session for September 3rd at 6:15 p.m., regarding the above stated matter was moved by Soucy and seconded by Mucciolo.

Roll Call: 7 Ayes

0 Nay

Motion Carried

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

None

3. OLD BUSINESS: None

4. NEW BUSINESS:

(A). ORDINANCE No. 13-43 AC CMS: An Ordinance Amending Chapter 331.12 of the Codified Ordinances of the City of Oberlin, Ohio, Pertaining to U-turns Restricted to Prohibit the Crossing of the Oncoming Lane of Travel for the Purpose of Parking in a Diagonal Parking Space. (1st)

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 Broadwell.

Norenberg provided the history surrounding the request before Council. It was noted that the current language in the City code doesn't prohibit making a U-turn into a parking space. The proposed changes will fix this situation and hopefully make things safer in Oberlin for motorists and pedestrians.

Chief Miller explained that the current code provision prevents a car from turning so that it proceeds in the opposite direction. In the past when the Police Department tried to pursue these charges in court, the court ruled that a u-turn into a parking spot wasn't a complete turn in an opposite direction, so the Police Department had no room for enforcement. U-turns into parking spaces are becoming more common, therefore, staff asks that the language restricting u-turns into a diagonal parking space be added to the ordinance so that law enforcement can clearly define what is considered to be a violation.

Burgess asked how the public would be notified of this change. Miller remarked that social media would be used along with signage and word of mouth.

Kevin Weidenbaum, 99 South Cedar Street said that he didn't see turning left into a parking spot as being a safety hazard. He listed several scenarios in the City where turning left was permissible and was unclear as to why it would not be permitted while parking.

Chief Miller said he disagreed. When turning left into a parking space you have to turn more at an angle to try to park between two white lines and a person attempting to park in this manner would be impeding traffic by stopping in the middle of a block waiting for traffic to stop to get into a parking space.

A motion to suspend the rules requiring three readings was moved by Mucciolo and seconded by Burgess.

Soucy said she would like to have the nature of the motion that Mr. Mucciolo has suggested explained. Mucciolo explained that if the motion that he has proposed is passed by the members of Council and the underlying ordinance is also passed then the ordinance will go into effect in thirty (30) days. In the interim the Chief will be notifying the public of the changes to the code.

Roll Call: 7 Ayes
(1st, Suspension of Rules/ Effective in 30 days)

0 Nays

Motion Carried

Roll Call: (1 st , Final)	7 Ayes	0 Nays	Motion Carried
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(B). ORDINANCE No. 13-44 AC CMS: An Ordinance Amending Chapter 927.07 of the Codified Ordinances of the City of Oberlin to Eliminate the Blanket Prohibition of the Possession of Firearms in Municipal Parks. (1st)

Mucciolo 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 Broadwell, seconded by Mucciolo.

Law Director Jon Clark stated that Council had been presented with a proposed ordinance to amend current sections 927.07 of the Codified Ordinances to prohibit the unlawful possession of firearms in City parks and recreation areas. Currently, Section 927.07 of the City Ordinance prohibits the possession of firearms in a City park or recreation area.

On December 12, 2006 the Ohio legislature passed a bill which contained R.C. 9.68, which states as paraphrased:

"That there is an individual right to keep and bear arms. That it is a fundamental individual right that predates the United States Constitution and Ohio Constitution; that because the right to keep and bear arms is a constitutionally protected right in every part of Ohio, there was a need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition.

R.C. 9.68 provides that except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.

R.C. 9.68 confers a largely unrestricted right of any person to possess a firearm in Ohio. Firearm is defined in another section of the Revised Code and is referenced in R.C. 9.68.

In addition, R.C. 9.68 requires that a court award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation that is in conflict with this section. “

Clark noted that Section 3, Article XVIII of the Ohio Constitution which is known as the home rule amendment gives Ohio municipalities the right to regulate all matters of local self-government and to adopt and enforce such local police, sanitary and other similar regulations as are not in conflict with general laws.

That means that a state statute will take precedence over a local ordinance where:

1. The ordinance is an exercise of the police power;
2. The statute is a general law; and
3. The ordinance in its conflict with the statute

Since the enactment of R.C. 9.68, the Ohio Supreme Court has held:

“That the municipal regulation of firearms is an exercise of police power under Section 3, Article XVIII of the Ohio Constitution. (See, Ohioans for Concealed Carry, Inc. v. City of Clyde, 120 Ohio St. 3d 96, 99 (Ohio 2008); and, Section 9.68 of the Ohio Revised Code is a general law (See, City of Cleveland v. State 128 Ohio St. 3d. 135 (Ohio 2010).”

Accordingly, any municipal ordinance that regulates the possession of firearms may not be in conflict with Section 9.68 of the Ohio Revised Code.

Currently, our ordinance, Section 927.07 prohibits the possession of firearms in City parks and recreation areas and is therefore in conflict with the RC 9.28.

In August, the Oberlin Police Department was contacted by two individuals to notify us that our ordinance prohibiting the possession of firearms in City parks did in fact conflict with state law and urged us to correct the Codified Ordinances as soon as possible. Accordingly, the outdated section of Part Nine, Title Five of the Codified Ordinances is proposed to be modified to make it “illegal” to “unlawfully” possess a firearm in City parks or recreation areas.

Soucy asked what the worst case scenario would be if City Council refused to comply. Clark responded that Section 9.68 of the Ohio Revised Code (ORC) provides for the award of cost in attorney fees to any successful challenge of an ordinance that is in conflict with that section of the ORC. That means they cannot simply choose not to enforce it and leave it on the books, because just having it on the books exposes the City to a lawsuit. For this reason he is recommending that the issue be addressed immediately. Soucy asked how much the City could be sued for. Clark remarked that it would be expensive; the cost could be in the tens-of thousands for the City’s share alone.

Peterson contested the passage of the ordinance. He questioned how this ordinance would weaken the City’s ability to prevent someone from carrying a firearm in City Hall or within the courtroom. Clark replied that this ordinance would only address City parks and recreation areas. There were other statutes that list places where firearms cannot be carried which include courtrooms, government offices, and schools to name a few. Unfortunately City parks and recreations were not among those locations.

Burgess said he was familiar with the list of places where firearms were prohibited, but the law seems to allow firearms in front of all public property, such as the sidewalk in front of his house, the street downtown, and even the front yard of City Hall. He was so angry, two weeks ago, when this group posted on their website that they were going to be coming to Oberlin on the day of Family Fun Fair that he called the City Manager and expressed how unwelcome they were to bring their guns to Oberlin. Whether or not it is legal doesn’t say

anything about whether or not it is right. He felt powerless to fulfill his duty as a public servant to ensure the peace, health, and safety of the citizens of Oberlin. He further expressed his dissatisfaction with people who think that their right to a weapon trumps his right to peaceably assemble in the City. At this time he declined to support the ordinance, stating that rather than overturning the ordinance he would be searching for a way to satisfy the state law and still protect the City from being sued.

Broadwell asked if the group Ohioans for Concealed Carry (OCC) was responsible for targeting Oberlin. Clark replied that he didn't know if it was Ohioans for Concealed Carry that had contacted the City. He was not aware of the history of the OCC organization, or any other organization which supported open carry laws. He only knew that generally when there is an opportunity to recover costs and attorney fees by challenging ordinances that have been held by the courts to be illegal, there are groups of people who target certain communities to make the money. There are also groups that are well intended and there are people in groups that believe in this statute and are interested in seeing that there is not a chilling effect on this fundamental right to bear arms. The City Manager was contacted by two people whose intentions were unknown. The City Manager later received an email that said that a man and woman (carrying firearms) were going to bring their children to a park in Oberlin. This couple stated that they understood the City of Oberlin's position on open carry was in violation of the State Constitution. A second email followed the first one from a different person, but he couldn't say if there was any affiliation with any group or organization.

Meadows asked how inserting the word "unlawful" would impact the Police Department's ability to enforce this regulation. Chief Miller responded that inserting the word would not change their enforcement power. Currently the statute allows the Police Department to enforce the law if someone carrying a firearm is acting in a manner that is in violation of ORC Section 9.68. The insertion of the word "unlawful" only reaffirms the City's commitment and right to enforce the law when necessary.

Meadows asked if at the present time, when someone is observed carrying a gun, could the police approach this person and ask to see a permit. Miller said that was a good question. He didn't know, if they had no probable cause to believe that the individual in question was committing a crime, if they could ask them for their permit. It would be like seeing someone driving and stopping them to ask if they have a driver's license.

Clark remarked that he would agree with the Chief's response. He was glad to see that the matter was only on first reading because he would like the opportunity to spend more time discussing this with the Chief and City Prosecutor. He said that generally, unless there is some basis for believing that someone is committing a crime, that it would not be appropriate to approach them.

Clark offered further clarification to the proposed amendment. He said the "unlawful" possession of a firearm is a crime in and of itself regardless of whether it is in our park ordinance or not. This would give the police an additional charge to bring if someone is found in a park with an unlawful possession, because they could be charged with the underlying unlawfulness of the possession and they could also be charged with the violation of the park ordinance because that is where they were when it occurred.

Rimbert said he would add his two cents. He said he didn't think that anyone was happy about this, but at the same time they have a responsibility to the citizenry of Oberlin. One thing he didn't want to do is blow this up so big that the next thing you know everyone is coming to Oberlin with a gun to prove a point. He was a baseball umpire for 35 years. He would hate to be out on the field and look over and see that someone had a gun on their side. He stressed that this is not an easy decision for Council to make. They are going to pass it on first reading and allow the Law Director to continue to do his homework in the meantime. The Supreme Court has ruled in favor of the constitutional right to bear arms, so we will have to continue to see what can be done at the local level.

Soucy said she felt that one way that a law gets changed is by challenging it. One thing that they need to seriously consider, is whether or not they want to commit themselves to challenging this law, even if the

outcome costs money and we don't win. She has a grandson that plays soccer, and she wasn't sure that she would want him on the soccer field if this becomes the law of the land. She shared Mr. Burgess' emotion and deep concern for this law. Oberlin has a long history of not going along with the status quo. This may be something where they want to take a stand, even if the outcome is negative. She would like for them to explore some different ways to deal with this issue. Maybe they could table it or maybe they could have it in the workings but not respond. She had mentioned to Mr. Clark, and maybe foolishly, that maybe they could make all of their parks private. She would like to think that there is some way that they don't automatically go along with this, because there are parents that are not well controlled at athletic events and she certainly didn't want a gun in their hands.

Broadwell said he found the ordinance to be distasteful. He suggested that they pass the ordinance on first reading and get it in motion. He noted that the Law Director suggested that this would protect the City a little bit, as long as the process continued to move on. They can look at some alternative language over the next two weeks to find some language to fight this if there is a remote possibility to do so.

Rimbert asked the Law Director where the City would stand if they voted the ordinance down. Clark responded that the Code as currently written could be challenged. He didn't think that the provision could currently be enforced and he didn't think that they would enforce it in light of where they are today. His concern is that if the Code remains as it is written there is the possibility that the City could be sued. He believed that as long as they are moving ahead, they should be protected against any legal action. Rimbert said that if at some time they decide to take a stand then they would do so.

David Ashenhurst, Sumner Street expressed his appreciation for Council's decision not to pass the proposed ordinance on emergency. He commented that the City had apparently been out of compliance with Ohio Revised Code Section 9.68 for several years. He wondered what the Ohio Municipal League told its members in 2008 and 2010 as the law that they wanted was struck down. He also questioned why everything that is unconstitutional has to be pulled out of the City Code and if that is the case, why this hadn't been pulled out of the Code books when it was reviewed by our codifiers several years ago. Additional comments were made regarding the Supreme Court's decision for both the City of Clyde and Cleveland. He asked the Police Chief to define what is meant by "menacing and intimidating" in the proposed ordinance.

Rimbert also asked for clarification on what was meant by "menacing and intimidating". Chief Miller said that the phrase refers to the act of making a person fear that there is going to be harm coming to them.

Aliza Weidenbaum, 99 South Cedar Street said that she appreciated Mr. Burgess' statement, but she didn't feel powerless. It seemed to her that prohibiting guns from parks did not restrict a person's ability to own a gun, possess a gun, purchase a gun, sell a gun, transfer a gun, transport a gun, store a gun, or keep any gun. So she feels that legally they have a great way to say that they are not restricting this freedom to bear arms by restricting guns from parks.

Silvija Koschnick, Elm Street, said she was curious to know what other action the City of Oberlin could take before they spend the taxpayer's dollars on court fees. She asked if there was someone whom they could write letters to, to address their concerns for this law. Clark remarked that the legislation would have to be changed at the State level. Rimbert suggested that they start talking to their State senators.

Linda Slocumb, Woodhaven Place, President of the League of Women Voters of the Oberlin Area, made Council aware that, although the League is a non-partisan organization, they do study issues and take positions on certain issues. The national League, state, and local leagues took a position on gun control in 1990 which was amended in 1994 and 1998.

She read a statement of the LWVUS' position on Gun Control:

“The League of Women Voters of the United States believes that the proliferation of handguns and semi-automatic assault weapons in the United States is a major health and safety threat to its citizens. The League supports strong federal measures to limit the accessibility and regulate the ownership of these weapons by private citizens. The League supports regulating firearms for consumer safety. The League supports licensing procedures for gun ownership by private citizens to include a waiting period for background checks, personal identity verification, gun safety education and annual license renewal. The license fee should be adequate to bear the cost of education and verification. The League supports a ban on “Saturday night specials,” enforcement of strict penalties for the improper possession of and crimes committed with handguns and assault weapons, and allocation of resources to better regulate and monitor gun dealers.” She added that the League of Women’s Voters now has 125 members in the Oberlin area.

Sandy Zagarell, 265 East College Street asked if Oberlin was the only municipality in Ohio with this kind of Ordinance on its books. Law Director Clark said he didn’t know for sure but he would doubt it. Zagarell offered the suggestion to talk to other municipalities to see if they were undergoing the same situation as the Oberlin community and if so, maybe they should join forces and try to fight this with other communities. She asked if the place of “recreation” would only apply to playgrounds and if not how would the proposed ordinance impact places like Splash Zone. Clark said he didn’t know what the intent was when the original ordinance was adopted by the City. Parks would be areas designated by the City of Oberlin. He didn’t know if there was a designation for recreational areas or not. He further stated that he didn’t believe that it would, since Splash Zone was a Metro Park and he wasn’t sure what their policy was for firearms.

Burgess said Ohioans for Concealed Carry’s website is a clearinghouse for information where the members of the organization share which Cities and organizations they have gone after. When challenged by this group, Metro Parks has responded to the group in writing that it is their legal right to carry a gun in the Lorain County Metro Parks. He didn’t know if that would be true inside the building at Splash Zone. Burgess responded in the affirmative to Zagarell’s earlier question pertaining to whether or not other communities had been targeted by OCC as well.

Rimbert questioned Chief Miller on whether or not a person carrying a firearm could walk into a downtown merchant’s establishments if they have posted a sign prohibiting the possession of firearms in their location. Chief Miller said if it were one of the restricted areas, like a bank or government building, then they couldn’t carry a concealed weapon on the premises. He noted that bars used to be restricted areas as well, but not any longer. Clark noted that the concealed carry law does have provisions in it as to what type of signs and prohibitions that private property owners and business establishments can place on their property to prevent people from bringing concealed guns into their premises. He was not prepared to answer as to whether that law would apply to open carry weapons.

Will McCracken, 43 North Park asked if a permit for a concealed carry, or the application for a permit, was a matter of public record. Chief Miller said he didn’t know, but it was possible since the issuance of permits is something that is done during their normal course of business. McCracken said if it is a matter of public records, would it be possible to post that information on Twitter, Facebook and other forms of social media. Rimbert said the Law Director would do some homework on this matter and would be back in touch in about four (4) or five (5) days.

Megan Schief questioned what would happen if they sold the City’s parks to private owners? Clark responded that if that were the case then the proposed ordinance would not apply.

David Sonner, Groveland Street noted that although bars are no longer restricted areas for concealed weapons carriers, a person who is carrying a concealed weapon is not allowed to drink.

Kevin Weidenbaum, 99 South Cedar Street stated that if you have a conceal carry permit, you can carry the weapon on your own body in a holster, or in a closed case, bag, box, or other container that is in plain sight and

has a closing mechanism such as a zipper, snap, or a buckle. Which means that a person with a concealed carry permit, could go on to one of our playgrounds with his or her weapon in a duffel bag or a back pack, sealed with a zipper that a child might take some interest in. So when we think about a person carrying guns, we should also think about the cases where they bring guns to an area where other people might gain access to them.

Marty Buck, Oberlin resident said he shares many of the concerns that were expressed earlier in the meeting. He said that if they really wanted to make a change then they needed to exercise their right to vote in November 2013 and elect senators to office, who can reverse some of these state laws in favor of ORC Section 9.68.

Sooucy said she did some research and discovered a shift in the culture since the 1960s, when the country experienced the assassination of John F. Kennedy, Malcolm X, Martin Luther King Jr. and Bobby Kennedy, the response of the citizenry was to advance gun control. Now the irony in our culture is that we have had some horrible events in the last couple of years, and the cultures response is to put guns in more people's hands. She also wanted to share that last year, Ohio led the nation in the issuing of concealed carry permits. Rimbart added that it was important to note that the actual number of permits sold in Ohio last year was 66,000.

Roll Call: 4 Ayes 3 Nays Motion Carried
(1st, Reading) (Soucy, Broadwell, Mucciolo, Rimbart) (Burgess, Meadows, Peterson)

Rimbert remarked that passage on first reading meant that they would allow the Law Director additional time to review this information and in the end if they decide to take a stand, that's what they would do. If they have to make Oberlin the battleground for this legislation then he could not think of a better place to have the battle fought.

(C). ORDINANCE No. 13-45 AC CMS: An Ordinance Accepting the Bid of Premier Concrete and Excavating, LLC of Milan, Ohio, for the West College Street Sidewalk Installation Project and Declaring an Emergency. (1st)(E)

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

Roll Call: 7 Ayes 0 Nays Motion Carried

The Clerk read as directed.

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

Norenberg provided the history of the proposal, noting that a presentation had recently been given from the Public Works Director and in July a public meeting was held with residents from the area. He noted that the Public Works Director was present to answer additional questions if necessary.

Burgess asked if QCI would need to be hired to inspect this project since it was just a sidewalk. Baumann noted that they did have a tentative proposal for QCI to look at this. There are some drainage issues and some coordination issues with homeowners. The proposal has not been accepted at this time. Burgess said he didn't think it was necessary to have QCI inspect the project since it was just a sidewalk installation, but he expected to see the proposal brought back to Council if it were needed.

Broadwell asked when the project was going to be completed. Baumann said that they haven't received an official construction schedule at this time and didn't expect to get one until the contractors were almost ready to start. Premier Concrete has indicated that they would be ready to start in about a month. Baumann anticipated that the project would take approximately three weeks to finish.

Mucciolo recalled comments he made from a previous meeting that public funds may not have to be committed to this project if the Safe Routes to School proposal comes in under budget. He also commented that based on the sidewalk inventory report that he received from Mr. Baumann, that there were other areas in Oberlin that were lacking pedestrian infrastructure to the same degree of the project before Council. He hoped that councils in the future would be willing to consider sidewalks as a Public Works project and prioritize them as part of the budgeting process.

Rimbert, seeking clarification, asked Mr. Baumann if QCI was going to be negotiating with residents. Baumann said no, his remark was that QCI would be coordinating with homeowners in the same capacity that they have in the past.

A motion to suspend the rules requiring three readings and to elevate Ordinance No. 13-45 to emergency for the reasons stated in Section 3 was moved by Soucy, seconded by Peterson.

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

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

(D). ORDINANCE No. 13-46 AC CMS: An Ordinance Amending Ordinance 13-24 AC CMS to Authorize an Increase in the Contract Amount with Quality Control Inspection, Inc. (QCI) of Bedford, Ohio, to Provide for Additional Professional Construction Inspection Services for the Main Street Sanitary Sewer Improvement Project in the City of Oberlin and Declaring an Emergency. (1st)(E)

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

Roll Call:	7 Ayes	0 Nays	Motion Carried
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The Clerk read as directed.

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

Norenberg noted that the above stated Sanitary Sewer Improvement project took twice as long to complete than anticipated due to several unforeseeable issues. As a result staff is requesting an additional \$18,777.92 to complete the project on time.

Burgess asked if they were expecting additional costs from Mr. Excavator. Baumann said they were not; they expect them to be about \$30,000 below the contract amount when the dust settles.

A motion to suspend the rules requiring three readings and to elevate Ordinance No. 13-46 to emergency for the reasons stated in Section 4 was moved by Mucciolo, seconded by Broadwell.

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

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

(E). ORDINANCE No. 13-47 AC CMS: An Ordinance Authorizing the City Manager to Enter into a Master and Other Agreements with Quality Control Inspection, Inc. (QCI) of Bedford, Ohio, for Professional Construction Inspection Services for Capital Construction Projects in the City of Oberlin and Declaring an Emergency. (1st)(E)

Soucy 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 Broadwell, seconded by Mucciolo.

Norenberg said that Council was very familiar with the use of QCI for inspection services. In an attempt to streamline the process currently used they are proposing the approval of a Master and other Agreements ordinance with QCI to allow for on-site construction inspection and administrative services for select capital projects for the period July 1, 2013 through June 30, 2015. He explained that he would be authorized to contract services for specific projects as long as the estimated cost of inspection services for any individual project doesn't exceed the authority provided in the Ohio Revised Code. Council would be apprised of the City Administration's intent to utilize construction inspection services when construction contracts are awarded. It was noted that QCI would only be used for budgeted projects.

Norenberg remarked that the Finance Director had caught a couple of concerns in the contract terms and conditions that need to be further discussed with OCI.

Soucy asked what triggered the use of QCI. Baumann remarked that there were a number of factors to consider prior to using QCI. The primary factor for using QCI is when working with a new contractor who is unfamiliar to the City. Another factor is the availability of City staff to oversee the project.

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

(F). ORDINANCE No. 13-48 AC CMS: An Ordinance Accepting the Bid of Farabee Mechanical Inc., of Hickman, Nebraska for the Emissions Control Improvement Project for the City of Oberlin, Ohio, and Declaring an Emergency. (1st)(E)

Mucciolo 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 Broadwell, seconded by Mucciolo.

The City Manager deferred the discussion to OMLPS Director Steve Dupee. Dupee said that this Emission Control Improvement Project would affect seven (7) engine-generators at the City's power plant and one (1) engine – generator at the City's Water Plant in order to comply with National Emission Standards for Hazardous Air Pollutants (NESHAP) released by the United States Environmental Protection Agency (USEPA) of January 2013.

These standards from the USEPA address emissions from reciprocating internal combustion engines (RICE) of all sizes and seeks to control carbon monoxide, formaldehyde and other air toxics in engines constructed or reconstructed before June 12, 2006.

There are two essential compliance technologies used to meet the NESHAP RICE requirements. One is the deployment of an oxidation catalyst system to achieve a minimum 70 reduction in CO emissions from the engine exhaust stream. The second thing they need to do is add a closed crankcase ventilation system to route crankcase vapors through a cartridge type filter that captures particulars, metals and oil mist from the exhaust stream.

They received two bids for the project one from Farabee Mechanical Inc. of Hickman, and one from Fairbanks-Morse Inc., of Beloit, Wisconsin. Utilities Plus Energy Services (UPES), the utility's engineering firm, has completed a review and analysis of both bid submittals and recommends bid award to Farabee Mechanical Inc. in the amount of 1,047, 505. Staff would note that Farabee Mechanical has performed work for OMLPS in the past and their work has been exemplary, enabling the utility to further reduce wholesale power costs from peak-shaving and transmission-shaving operations over the past year. Dupee remarked that this is a significant capital investment for the utility. Back in June Council authorized an appropriation in the amount of \$1.1 million dollars in operating funds, which was transferred from the utility's Operating account to its Capital Reserve account. Staff recommends moving forward with that project. They expect to pay off the cost of the project in a two year period due to the benefits anticipated from the transmissions savings.

Soucy asked what the future of the Plant looked like in the next 10 years. Dupee remarked that the plant operates on a Title Five (5) permit, and that Title Five (5) permit lays out a number of requirements dealing with limitations related to emissions allowed from the Power Plant on an annual basis. Some of those limitations are related to the number of hours that we can operate the units, some of the limitations are related to various amounts of pollutants out of the plant. This is just one more requirement by the EPA that limits the amount of emissions from the plant, but does it in a way that allows them to reduce the plants contributions to ground level ozone. Dupee admitted that he didn't know what was in store for the future of the plant. The plant has been a wonderful benefit to our community. In terms of keeping wholesale power costs low and serving as a back-up in case of an emergency event. There have been a lot of advantages of retaining this Plant and he felt that the City should continue down this track. He expected emission requirements to get more and more stringent, which means that the City should continue capital investment in the plant. As long as they can make a financial economic case for the community to do that, and still be able to maintain competitive rates, he would recommend that the City continue down this track.

Burgess asked if PUC had made a recommendation on this project. Dupee responded that PUC had not made a recommendation on this project, but they did approve the capital budget for the same improvements for half of the plant in 2012. Discussion ensued relating to PUC's lackluster performance in its advisory role to Council. Dupee voiced his preference to have a recommendation from PUC on this project prior to approving it, but since time is of the essence he agreed to vote in favor of the project. He further noted the importance of having PUC's recommendation due to the large expenditure needed to complete this project. Councilor Meadows, PUC liaison, said she would pass along Mr. Burgess's concerns to the PUC chair.

A motion to suspend the rules requiring three readings and to elevate Ordinance No. 13-48 to emergency for reasons stated in Section 3 was moved by Broadwell, seconded by Soucy.

Roll Call: 7 Ayes

0 Nays

Motion Carried

(1st, Suspension of Rules/ Emergency)

Roll Call: 7 Ayes

0 Nays

Motion Carried

(1st, Final)

5. OTHER NEW BUSINESS:

None

6. COUNCIL COMMUNICATIONS:

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

Soucy

- Unveiled award from Team NEO for the retention of Synapse Biomedical.

Burgess

- Provided an update on behalf of the Sound System Ad hoc committee

7. CITY MANAGER'S REPORT:

- Met recently with Oberlin College Dean of Students, Eric Estes, regarding:
 - Emergency Plan
 - Public Safety and Off Campus Orientation
 - Trespass List Policy Changes
 - Tobacco Free Campus
- Toured Green Circle Growers with Congressman Jim Jordan
- Citywide Garage Sale is August 31:
 - 11AM-3PM Surplus furniture, bikes & more. Green Acres garage.
- Follow-Ups:
 - Ruth Palmer's concerns shared in May regarding hiring of local residents
 - Met w/ Ruth soon after to discuss her ideas and our bidding and hiring practices
 - Economic Housing and Development Coordinator hosted a forum in July, Ruth attended the forum regarding employment training / assistance programs
 - County Commissioner's Town Hall Meeting: November 13, 2013 from 6 – 7 p.m.
- We have reached Climate Positive Development *Participant* Status - Press release distributed
- Republic Services Recycling Facility Open House - invitation distributed

8. FINANCE DIRECTOR'S REPORT:

- 2012 Audit Completed.
 - Explained results.
 - Received the Auditor's State Award
- Quarterly Bank and Investment Summary Reports
- Income Tax Levy on the Ballot in November
- Library Levy on the Ballot.
- Initiative petition revised language:
 - Changed "commercial" to "corporate".
 - Changed "approved" to "adopted".
- 2014 Budget Process starting.

9. PUBLIC PARTICIPATION:

- None

10. ADJOURNMENT:

Being that there was no further business to come before Council at this time the meeting adjourned at 9:20 p.m.

Attest:

BELINDA B. ANDERSON, CMC
CLERK OF COUNCIL

APPROVED: 09/03/2013

RONNIE J. RIMBERT
PRESIDENT OF COUNCIL

POSTED: 09/04/2013



