

*City of Olmsted Falls*  
**Minutes of a Regular Council Meeting**  
**Tuesday, February 26, 2019, at Olmsted Falls City Hall**  
**26100 Bagley Road – Council Chambers, 7:30 p.m.**

The Pledge of Allegiance was recited. Council President Paul Stibich called the meeting to order at 7:33 p.m. Roll call was conducted. Councilmen Jim Haviland, Lori Jones, Ed Gorski, Denise Nicolay, Terry Duncan, and Lee Fenrich were present.

Also, in attendance: James Graven, Mayor, John Castele, Asst. Law Director, Vic Nogalo, Finance Director, Odis Rogers, Police Chief, Joe Borczuch, Service Director, and Paula Accordino, Economic Development Director. Audience: 16.

**Approval of Minutes**

Mr. Gorski moved to **approve** the minutes from the Finance Committee Meeting of February 5, 2019; Ms. Duncan **seconded**. Poll: 6 ayes; 0 nays; 1 abstain (Fenrich). **Motion carried.**

Mr. Haviland moved to **approve** the minutes from the Council Work Session of February 12, 2019; Mr. Gorski **seconded**. Poll: 7 ayes; 0 nays. **Motion carried.**

Mr. Fenrich moved to **approve** the minutes from the Regular Council meeting of February 12, 2019; Ms. Duncan **seconded**. Poll: 7 ayes; 0 nays. **Motion carried.**

**Consideration of Amendment to the Agenda - None**

**Mayor's Report and Appointments**

Mayor Graven stated that he is happy to announce that the city has two brand new signs for the 2000 State Championship Football team. One will be placed on the west end of Bagley and the other on Columbia Road. He would like all the members of the team to know that on behalf of the city we are very proud of the championship team.

Mr. Stibich stated that before we get into the serious work this evening, he would like to state that over 18 years ago this town was emotionally transformed when the high school football team won the Division II State Championship. School children and residents alike lined Bagley Road to wish our athletes well as buses took the team to Massillon for the game, young and old alike were inspired by a small town accomplishing great things. Residents paid for signs to post on the roads into our town to commemorate this event. Years later the girls high school state championship volleyball team was also commemorated by adding to the sign. The decision to remove the commemorative signs took away the reminder that every day people can accomplish great things. He was happy when Mayor Graven ordered the signs to be replaced but upon doing so one year ago, it was discovered that two of the signs were missing. Again, donors purchased signs to replace them. Tonight, he asked Coach Jim Ryan and some members of the 2000 championship football team to appear before Council and join us in recognizing their accomplishment in the hope that our young people, and in deed all residents of our town, will always remember and know that everyone is capable of doing great things. Thank you,

Coach Ryan, for your service to the schools over many years, thank you for the 2000 football team and the championship and gentlemen thank you for coming tonight to recognize the dedication of this sign.

There was a small recess in order to take pictures.

Mayor Graven stated that he is pleased to report that the city has been awarded another grant for \$50,000 for reimbursement of preventative maintenance on Sprague Road. This grant was received through the Department of Public Works Preventative Maintenance Program and covers all costs of materials. He spoke with Director Borczuch who indicated that he will use the entire amount and there will be approximately \$35,000 in labor and equipment costs to the city. The review process was highly competitive and funds were limited. The program will likely only be in effect for one year. He would like to thank Ms. Accordino, Mr. Borczuch and City Engineer Don Sheehy who have been doing a great job over the last year in obtaining grants for the city.

### **Communications from Residents**

**Ann Reichle, 8155 Columbia** (business address), stated that she would like to comment on the Civil Service last week. She was in attendance at Council's Work Session Tuesday evening and heard them speak about the civil service meeting the next day. On her way out she stopped at the bulletin board to see what time the meeting was because she wanted to attend and there was no notice posted. She then walked back up and someone informed her that it was at 3:00 p.m. Mr. Stibich stated that it was posted but was not in the glass case. Ms. Reichle indicated it was not posted and was not the only one that looked at it and neither it wasn't on the website nor after the meeting. The next day she was giving a presentation at the senior center; on her way out about 1:00 she stopped by and there it was front and center on the bulletin board on top of other things posted at 1:30; it was not in the glass case just pinned on the bulletin board and it was posted over notices that were there the day before and so, she realized the meeting was at 1:30 after reading the notice so fortunately she raced back and dropped off what she had and came to the meeting. She was a little concerned about things that went on at the meeting and just wanted to let Council and she knows that Ms. Duncan was there on behalf of Council. Civil service was reviewing the rules and one of the things brought up as Mr. Bemer read the rules and then they were going over them one by one to make some changes in the rules. One of the things that Mr. Bemer read was that there was a requirement for a written test for fire and police chief in the civil service rules. She was present at the work session and heard him talk about how rules couldn't be changed after the process had already started, after the posting had already been made. First, he said to them again, what he said Tuesday that Council didn't have any right to have oversight over civil service regardless of what our charter says, and secondly that they were trying to find a way to work through this and continue to hold the test by giving a scenario to this person to write a paragraph to pass the test but that is not a written test and that is not what its meant to be. She was rather disturbed by this and that this was going on by our city's legal counsel to say this. She feels that everything should be fair and square so that everybody is given the right to apply and the process is solid from end to end she doesn't want to see the city end up in court again, we've spent to much money doing that over the last few years. Mr. Stibich stated that when the police chief was held a year ago, one of his complaints was that it was oral and is that really a thorough a test but this test is an oral assessment and included in that is a written component so its not just an oral test. It is given by several retired fire chiefs from the surrounding area with no affiliation to Olmsted Falls through a testing service that chooses the testers and they ask questions, they give a physical scenario

on how to handle situations and they also expect written responses so there is a written component to this. Whether that qualifies as a written test under the Ohio rules for civil service he is not sure but assumes that it does, but he could be wrong. He does believe that Ms. Jones has suggested that maybe Council should have a work session to discuss other situations in civil service and will probably have that.

**Ted Haun, 9618 East River Road**, stated that there is a bridge issue that Council is familiar with. He was informed that they had a meeting with our councilman at one of the resident's house a few weeks ago. Mr. Fenrich indicated that it was approximately one month ago. Mr. Haun stated that he was told that a verbal agreement was made that if the residents want to participate in paying for the bridge they can, and if they didn't want to, they didn't need to. Then after another meeting here at council he was informed that now they decided to declare it a common drive and everybody is responsible for the issue. Now, he has the documentation going back all the way to the original owners, the deeds and information on the right-of-way's goes back four different owners to the Quarry's if anyone would like to review. He also has how his right-of-way and easement reads. Mr. Stibich stated that if there is something specific in the documentation that states that you would not have to pay for the bridge and somebody else does then council would be interested in that. Mr. Haun stated that basically its private property owners but it goes on to say that you have a right-of-way to freely come and go as need be and it gets into description on foot with animals, horse or any motorized vehicle or conveyance. You can't decide 40 or 50 years down the road freely come and going now that you have to maintain the bridge to come and go. Mr. Stibich stated that the document is silent on who maintains that bridge. He has given residents his advice on that, you benefit from the bridge you need to fix it and take care of it. He believes this will be discussed in the future. There is a piece of legislation on the agenda to rescind the legislation that was originally passed. He indicated that Mayor Graven has stated that he will be closing that emergency access road in 60 days and we have been talking to Mr. Haun and his neighbor's urging them to come to some kind of an agreement on financing the bridge. As he understands Mr. Haun and Mrs. School have not been interested in participating in that on a voluntary basis at all. He indicated that Council will need to determine what options there are at this point. Currently, we have legislation that states the city is not building the bridge, not giving the residents any financing, and will close the access road. If there is another way of doing this the city, the Mayor and Council would all be very receptive to offering financing to the residents to get this completed through real estate assessments. Mr. Haun indicated that we are also curious with the abatement law he understands and wants to know if the city will follow up on that. The property owners that have safety issues that affect the other residents that they are responsible to repair them as it affects their quality of life and safety issues will Council follow up on this part of the law. He does not have all the descriptions, they had three or four different descriptions and it covers it pretty much. Mr. Stibich stated that the city, Council and former Mayor Donegan came up with a plan, which was approved and passed, we have had problems with it and have decided that the city will no longer participate and it will be up to the residents to inform the city what they would like to do, otherwise, the residents know the consequences. Mr. Haun replied the entranceway will be closed. Are you telling us this will fall on the private property owners or telling us it falls on all the owners? Mr. Stibich indicated that the city is asking that they figure it out as this is a private property issue. Mr. Haun indicated that he could never figure out how the past administration got involved to begin with. Mr. Stibich indicated that he was part of the Council that approved and was the lone no vote on the legislation.

### **Approval of Bills:**

Mr. Gorski moved to **approve** Pay Ordinance 2019-04; Ms. Jones **seconded**. Poll: 7 ayes; 0 nays.  
**Motion carried.**

### **Officials Reports:**

#### **Odis Rogers, Police Chief**

Chief Rogers stated that he would like to update Council on the K9 program. He stated that Officer Daugherty has been taking Gauge to training every Thursday and this has not caused any additional manpower issues on day shift. K9's of Valore last week donated the door popper and alarm for the cruiser and yesterday they brought a cage for the cruiser, the insert for the K9, they are also paying to have it installed, which is approximately \$1,500. Between these three things it is a little over \$5,000 that K9's of Valore have donated to this department. He stated that Officer Daugherty has stripped the cruiser, fixed all the rust spots on it and it looks really good. He removed all the striping from the cruiser and received a quote for the black and white, which matches the new SUV's, for \$425.00 and our police benevolent association will handle those costs. Mr. Stibich indicated that the Chief has kept his promise. Chief Rogers replied that he has and so far, the department has spent \$90.00 for two badges for Gauge. Mr. Stibich indicated that the city would do that for any officer. Chief Rogers replied that we do this for every officer. He indicated that the K9 is doing well, his training is going well and he is growing. As he has said in the past any time anyone in the community wants a visit, we will make that happen. He just received an email from the senior center asking if the K9 could be brought in for a visit, which will be scheduled. He stated that Officer Daugherty has taken Gauge to the schools and retirement communities, which is the other part of the promise to have the K9 a part of the community. Mr. Stibich indicated that he would be interested if and when the K9 gets involved in police work and asked the chief to update Council when that happens. Chief Rogers indicated that in six months the K9 will be certified on certain things and it will take a full year before he will be fully full purpose patrol certified. Mayor Graven indicated that he is aware that during training the K9 has already discovered heroin and cocaine so he is a good student. Chief Rogers indicated that the department hosted the K9 training group, Chris Hinckley the pastor of Olmsted Baptist Church who is also a community service officer for the city, graciously provided his building for training last Thursday, both he and the Mayor stopped by and it was a good training. He stated that Gauge was finding meth and heroin so he is doing well.

#### **Joe Borczuch, Service Director**

Mr. Borczuch indicated that Cuyahoga County Department of Public Works did award the city a \$50,000 reimbursement grant for Sprague Road for materials only. We have received monies in past years but this is the largest sum we received for any road maintenance. The city's cost will be the labor and equipment and he spoke with the finance director and reviewing which funds. The city did get rejected for Lindbergh rehabilitation. The city will reapply in 2020 which will probably be the last year. He will use inhouse dollars for some resurfacing of Lindbergh.

Mr. Stibich asked about chuck hole filling. Mr. Borczuch indicated that the department is out in between plowing details. If there is something that Council sees please email or call and he will get someone out.

Mr. Haviland moved to **approve** a requisition to Cargill Salt for rock salt to be used for the 2018-2019 winter season in an amount not to exceed \$28,075.00; Mr. Fenrich **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

Mr. Borczuch indicated that he has used 800 tons of salt so far this year that he has ordered, this order is just to have a stockpile in case it is needed. Mr. Stibich stated that with snow, freezing rain, rain and then freezing rain again the city uses more salt than a heavy snowfall. Mr. Borczuch replied that was correct.

Mr. Borczuch asked Council to approve a requisition to Cross Truck Equipment. This is the service body for the truck that was approved at the last Council meeting.

Mr. Gorski moved to **approve** a requisition to Cross Truck Equipment for a knapheide service body in an amount not to exceed \$9,995.00; Ms. Jones **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

Mr. Borczuch indicated during the wind storm the city faired good. The department was called in for approximately eight to nine hours on Sunday for minor clean ups. Mr. Stibich indicated that he saw a large tree fall on a home on Columbia close to John Road. Mr. Borczuch indicated that most become uprooted are because of how the roots grow.

Mr. Borczuch indicated that he received a letter from the cemetery board requesting a donation of a vehicle the department will be getting rid of. The Township donated a truck to the cemetery two years ago, and that vehicle is in need of approximately \$8,000 worth of work to keep it running. Therefore, the cemetery reached out to the city to determine if we had a vehicle that we no longer use. He indicated that his department will be getting rid of a truck and he believes it would be worthwhile to donate this vehicle to the cemetery.

Mr. Fenrich moved to **donate** a dump truck, as is, to the Union Cemetery Board; Mr. Gorski **seconded**.

Mr. Stibich asked what the city would have done with the truck if it was not donated to the cemetery. Mr. Borczuch indicated that he would attempt to sell it on govdeals. After researching the value of this type of vehicle on that site the average sale price is approximately \$2,500 to \$2,800. Mr. Stibich as opposed to keeping the money or contributing to the maintenance of the cemetery which the city does anyways and the Township has already donated a vehicle. Mr. Fenrich asked how much maintenance would be required on the current truck in order to make it useable. Mr. Borczuch indicated that the current vehicle would cost \$8,000. He indicated that if the truck is donated the board would need to remove the utility body off the truck and get an easy dumper for the dump unit and they are willing to pay for that change. Mr. Stibich indicated that the point he is trying to make is that the township contributes monetarily to the operations of the cemetery as well as the city and the township contributed a vehicle, which sounds like its in worse shape than the vehicle we will donate. Mr. Borczuch indicated that years ago we donated a backhoe as the one they are currently utilizing is the same backhoe. The city also donated another vehicle prior to the township's donation. Mayor Graven indicated that he has no issues with the city donating the vehicle. Mr. Gorski asked what year is the vehicle the city would donate. Mr. Borczuch replied that it is a 2003 and was supposed to be replaced approximately three years ago in the vehicle rotation and is better than the vehicle they have. Ms. Jones stated that as the cemetery liaison the cemetery is a non-profit organization and operate by a shoe string to keep the costs down for the residents of the township and city. Mr. Stibich indicated

that the cemetery has always been the lowest cost cemetery in the county. He has always wondered if they should be a little more self sufficient and these vehicles and the maintenance of the cemetery really should be paid for by customers for burials and plots. Ms. Jones stated that the reason the fees are low is because the city and township contribute to their operations so they figure the residents deserve the benefit. Poll: 7 ayes; 0 nays. **Motion carried.**

**Paula Accordino, Economic Development Director**

Ms. Accordino stated that she likes bringing in money more than she likes spending, she brings in money so that Mr. Borczuch can spend it. She indicated that the city has been invited by the Harding Family Trust trustees to submit a proposal for the cleaning of the covered bridge. She believes at a previous council work session there was some discussion regarding the cleaning and is much more of a complex endeavor than just pressure washing, as it involves complex rigging. They have invited the city to bypass the process of submitting a letter of intent and moving directly to the grant proposal process and are awaiting a quote for this project and believe the cost will be between \$12,000 and \$15,000. She stated that hopefully we will have a notice of an award early Spring in order to get the project scheduled. Mr. Stibich stated that the bridge is the property of the city correct? Ms. Accordino replied correct. Mr. Stibich stated that it is the Harding memorial bridge. Ms. Accordino replied yes and they did remark that they would like to see it look nice. Mr. Stibich asked Mr. Borczuch if the service department was involved in the power washing or is that contracted out. Mr. Borczuch indicated that the city hires an outside company due to the fact that the pressure washing takes place over the river and there is a 60 foot drop down to the river so proper rigging is needed.

Ms. Accordino indicated that she brought up the concept of a community reinvestment area (CRA) in the fall and there have been ongoing discussions. We will be meeting in the near future with a tax law expert to discuss preliminary parameters for what a tax incentive could look like here. We would like to create an uncomplicated structure that is straight forward for potential new businesses, but do want to have some flexibility. We also want to speak with the school board to discuss ways to make this mutually beneficial. We feel certain, as she knows many members of Council do as well, that a CRA is a good first step to starting economic prosperity. Mr. Stibich replied to be clear a CRA is? Ms. Accordino replied Community Reinvestment Area and what we are proposing is tax incentives community wide. Mr. Stibich asked what type of tax incentives. Ms. Accordino indicated that they are discussing both residential and commercial for real property. Mr. Haviland asked if this would be citywide or just districts. Ms. Accordino replied citywide. Mr. Haviland asked if a housing survey has been completed. Ms. Accordino replied that Chagrin Valley Engineering completed our housing survey in November and we have our application almost complete to present to Council and will be ready in the near future.

**Vic Nogalo, Finance Director – No Report**

**Councilman Lee Fenrich, Ward IV**

Mr. Fenrich indicated that he would like to discuss Baker's Creek bridge and the easement that Mr. Haun referred to. Based on a report by Andrew Leeb, Esq., real estate corporate litigator and compliance trainer, he defines the duties of a easement holder, which would be the holder of the easement which would be those individuals using the bridge. In the report it states "the law is fairly clear about who has responsibility for maintaining an easement, basically the person or parties using the easement, known as the easement holder, has the duty to maintain it." So, the argument as an easement holder makes the case the becoming a contributor towards the bridge. He does not want to start a discussion the legislation will run three readings.

Mr. Fenrich would like to point to the sign behind him and make sure that everyone reads and remembers it as we move through our meetings. Mr. Stibich indicated that he believes Council has been good about the sign this evening.

**Councilwoman Denise Nicolay, Ward II**

Ms. Nicolay asked Mr. Borczuch who would be responsible for chunks of curb that were damaged from the plows to fix the city or the resident. Mr. Borczuch indicated that the city would take care of the situation, once the weather improves. Mr. Stibich indicated that she should pass the information to Mr. Borczuch and he will remedy the situation, as soon as he can.

**Councilwoman Lori Jones, Council-at-Large – No Report**

**Council Pro-Tempore Jim Haviland**

Mr. Haviland stated that the Planning and Zoning Commission met last week and began reviewing the master plan that was approved in 2016. We felt that the Commission should be familiar with the action items and recommendations from the plan. He recommended that Ms. Accordino be invited to participate in these discussions as she does apply for grants and pursues additional dollars to implement things whether it is a Transportation for Living Communities Initiative Grant or other grants. He also believes that it will not only be important for the Planning and Zoning Commission to know when they receive cases regarding what is consistent or not consistent with the master plan. He believes that council should also be aware of some of the priorities that the residents and members of the master plan committee said were high priorities so that we can react and ask questions to make sure that we are supporting the efforts of the Director of Economic Development and the administration on advancing these initiatives, whether that is a pedestrian activated crosswalk at Main and Columbia for safety to get you across to an area that we are redeveloping. Ms. Jones asked if a work session would be useful. Mr. Haviland replied to let the planning commission review the priorities and develop a list which can then be presented to council for review. He believes this is important as there was a lot of work that went into this planning exercise.

Mr. Fenrich asked if citizens were involved with the committee that developed the master plan. Mr. Haviland replied yes and there were robust steering committees. He would be happy to share who those individuals were with Mr. Fenrich.

**Councilwoman Terry Duncan, Ward III – No Report**

**Councilman Ed Gorski, Ward I – No Report**

**Council President Paul Stibich – No Report**

**John Castele, Asst. Law Director**

Mr. Castele stated that it has been a pleasure to be at tonight's Council meeting. He indicated that Mr. Bemer will return on Friday and he will report to him everything that happens this evening.

**Old Business**

**Ordinance 05-2019**

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH SOUTHWEST GENERAL HEALTH CENTER FOR THE LEVY OF A TAX ON

REAL PROPERTY AND PAYMENT OF THE PROCEEDS THEREOF FOR THE MAINTENANCE, SUPPORT AND COMPENSATION FOR THE USE OF SAID HEALTH CENTER **Third Reading**

Mr. Gorski moved to **adopt**; Ms. Duncan **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

**Resolution 07-2019**

A RESOLUTION ADOPTING THE SOLID WASTE MANAGEMENT PLAN FOR THE CUYAHOGA COUNTY SOLID WASTE MANAGEMENT DISTRICT **Third Reading**

Ms. Duncan moved to **adopt**; Mr. Haviland **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

**Resolution 08-2019**

A RESOLUTION DECLARING THE AMOUNT OF TAXES THAT MAY BE RAISED BY A LEVY WITHIN THE TEN (10) MILL LIMITATION WITHOUT A VOTE OF THE ELECTORS OF THE CITY OF OLMSTED FALLS TO BE INSUFFICIENT, AND DECLARING AN EMERGENCY **Third Reading**

Mr. Gorski moved to **adopt**; Ms. Jones **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

**Ordinance 09-2019**

AN ORDINANCE AUTHORIZING AN INCREASE OF FIFTEEN DOLLARS (\$15.00) TO THE OLMSTED FALLS MAYOR'S COURT COSTS, AND EARMARKING SAID INCREASE TO THE PURCHASE OF CITY POLICE DEPARTMENT VEHICLES, AND DECLARING AN EMERGENCY **Second Reading**

**Resolution 14-2019**

A RESOLUTION TO FORM THE OLMSTED JOINT RECREATION DISTRICT BETWEEN THE CITY OF OLMSTED FALLS AND OLMSTED TOWNSHIP AND DECLARING AN EMERGENCY **Second Reading**

**Ordinance 16-2019**

AN ORDINANCE RENAMING AND AMENDING SECTION 434.10 OF THE TRAFFIC CODE CURRENTLY ENTITLED "TEXTING WHILE DRIVING PROHIBITED" SO AS TO FURTHER PROHIBIT INTERNET USAGE WHILE DRIVING AND ADDITIONALLY MAKING A VIOLATION OF SECTION 434.10 A PRIMARY OFFENSE, AND DECLARING AN EMERGENCY **Second Reading**

Mr. Gorski moved to **suspend**; Ms. Duncan **seconded**. Mr. Gorski indicated that he does not feel that this ordinance seems like common sense to him and does not see a need to keep it on the agenda. Mr. Haviland stated that if you are using an app for directions the use of your phone is still permissible. Chief Rogers replied correct. Mr. Stibich asked if using the device as a phone would be considered part of this ordinance or just texting. Chief Rogers replied that Bluetooth should be used, in other words handsfree. Voice Vote: 7 ayes; 0 nays. **Motion carried**. Mr. Gorski moved to **waive** the reading in its entirety; Ms. Duncan **seconded**. Voice Vote: 7 ayes; 0 nays. **Motion carried**. Mr. Gorski moved to **adopt**; Mr. Haviland **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

## **New Business**

### ***Resolution 17-2019***

A RESOLUTION REPEALING RESOLUTION 36-2017 WHICH PROVIDED FOR THE ABATEMENT OF NUISANCE CONDITIONS BY THE REPLACEMENT OF THE BRIDGE OVER BAKER'S CREEK WITH CONTRACTED SERVICES AND THE ASSESSMENT OF CONTIGUOUS PROPERTY OWNERS **First Reading**

Mr. Fenrich moved to **discuss**; Mr. Gorski **seconded**. Mr. Fenrich indicated that this resolution is written as if Council is repealing the entire ordinance, when in fact, he believes we discussed eliminating the land owner that does not use the bridge from the list of those responsible and removing the city as a contributor. Therefore, leaving the responsibility to the remaining nine homeowners and he believes this resolution will be redrafted. He wanted to bring this to everyone's attention in order to make it clear to everyone present that there will be enough time to prepare questions. Mr. Stibich indicated that this issue will also be discussed at a work session scheduled before the next council meeting beginning at 6:30 p.m.

### ***Resolution 18-2019***

A RESOLUTION GRANTING A PERMANENT UTILITY ACCESS EASEMENT TO COLUMBIA GAS OF OHIO INC. UPON FOR PERMANENT PARCEL NO. 291-14-049  
**First Reading**

Mr. Haviland moved to **amend** to have the spelling in the title of "Columbis" to "Columbia" and in Exhibit "A" the spelling of "Olmstead" to "Olmsted"; Mr. Gorski **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**. Mr. Gorski moved to **suspend**; Mr. Fenrich **seconded**. Voice Vote: 7 ayes; 0 nays. **Motion carried**. Mr. Gorski moved to **waive** the reading in its entirety; Mr. Fenrich **seconded**. Voice Vote: 7 ayes; 0 nays. **Motion carried**. Mr. Gorski moved to **adopt**; Mr. Haviland **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**.

## **Miscellaneous New Business**

Ms. Jones stated that she would like to say for 31 years of her life she was a regulator and is used to auditing things and enforcing the rules and the laws so this is her. She works at a place she regulator years ago and every time they do something, she is asked to stop being a regulator, but she can't. So, having said that and in light of things that have happened lately, she would like to bring a few items to Council's attention and the Mayor. First, there has been some controversy with the fire department which is no secret. The Civil Service Commission is supposed to be totally non-political and is supposed to follow the rules, she then distributed civil service commission rules to everyone. Mr. Stibich asked if everyone meant all of council and the law director. Ms. Jones stated that the Asst. Law Director already has a copy, so it would be Mayor and Council. She also distributed copies of the meeting minutes for January, 2019, and copies of the Ohio Revised Code that is referenced in the civil service commission rules. So there are no issues with the test she has a couple of issues, first is that and it was discussed at the January meeting that if there are at least two internal that want to apply you do that first and then if there are no internal then you go to the next level and there was no internal posting prior to the posting for everyone so we don't know if there would have been two internal people. Her understanding is once it was posted externally, they assumed that they would have it but they weren't given that opportunity. Secondly, the commission rules require a written and oral test and then it gives all kinds of examples on how they grade written tests and things

they may determine. The posting just says it's an oral assessment and it says the oral assessment is 100% of the grade. Also, the Ohio Revised Code, the last paragraph, states for promotional exams if there is a written portion you have to tell them what the source documentation for the written assessment is but there was no written assessment. The oral assessments that may include something in writing is not the same as a written assessment, from her understanding. The other issue was for example, at the May 2018 civil service commission meeting the board discussed what would happen if a person wanted to leave their position and go downward in a position and do we have any written rules for that. It was determined that we didn't and our Asst. Law Director/Prosecutor Mike Dolan advised them that the charter says that if there were any changes they would have to be approved by council, at which point our law director said, that he does not think Council should have to approve it. That concerns her because our charter says that Council has to approve changes in the rules and the Rocky River Charter for civil service does not. So, there may have been some discernment there but we have to follow our charter. Mr. Haviland asked if the law director works for Rocky River as well, is that the connection she is making. Ms. Jones replied Mr. Bemer is the law director in Rocky River, yes, but ours is totally different. Also, in the meeting Mr. Bemer mentions, because the civil service commission members were asking, and she would like to thank the commission members for their due diligence and for taking this position as it could be controversial and is time consuming and she appreciates their support. But they asked if there were any internal candidates and Mr. Bemer advised, on page 3, it's his understanding that there would not be any internal applicants, but like she said nothing was posted to determine actually what would have happened. Mr. Stibich stated that he understands she has a lot of issues with this and his suggestion would be since we are not going to answer them tonight, that we should have a work session. Ms. Jones stated that while she thinks a work session is wonderful her concern is that from her understanding there are 10 or 11 applicants and it will cost approximately \$900 a person which is \$9,900 so if the test takes place on Saturday and if it is determined that there was anything wrong, we would have to re-give the test and spend another \$9,900. Mr. Stibich asked if Council could stop the test at this point. Mr. Castele stated that Civil Service Commission can stop the test at this point, they have the right to either delay the test or cancel the test given whatever circumstances may arise and the commission is meeting tomorrow. He does not disagree with Councilwoman Jones and thinks that everyone wants to get this right because no one wants to do it twice. He thinks that is first and foremost on everyone's mind, we want to do everything right and if something comes to our attention that needs to be addressed, he is certainly glad to look at it. He stated this is important and obviously there is a position that is open and it's an important decision. He believes it is important to get it right and that is first and foremost. He believes Mr. Bemer also wants to do it right as well. He thanked her for bringing these issues to his attention and will certainly address them. Ms. Jones asked if the commission's meeting tomorrow is to review the candidates like a closed meeting and not an open meeting to discuss things, correct? Mr. Castele indicated that it will start as an open meeting. Ms. Jones asked what time was the meeting. Mr. Castele replied 4:15 p.m. He knows the commission members themselves also want to do this right. Ms. Jones stated that since she has so many questions should Council have someone independent look at these issues to make a determination just to make sure she is either wrong or correct. Someone who is familiar with civil service issues. She stated for example, the civil service commission answers to the State Civil Service Commission and they have to file an annual report there so maybe they could determine if the procedures were proper. Mr. Stibich asked if the state would determine that. Ms. Jones replied not them, an administrative judge could look at it and determine if the things were done properly and then it wouldn't be her saying it and it wouldn't be a battle between the two sides it would be someone independent. Mr. Stibich asked Mr. Castele if the independent individual would review the city's charter. Mr. Castele replied yes, he would look at the charter, the rules of the civil service commission which are unique to Olmsted Falls, as well as the

Ohio Revised Code. Mr. Stibich stated that this would not be something that someone could walk in and do a review. Ms. Jones replied no they would have to do their homework. She stated that its states that the fire promotions follow 124.45; 49; and 46 and she gave Council a copy of each section.

Mr. Stibich stated that for the audience's benefit the state has rules regarding civil service which we have to abide by but the city, correct me if he is wrong, is also permitted to make its own rules for civil service and those rules supersede the state's rule because of we are home rule. Mr. Castele replied right, if there is a conflict between the city charter or rules then they would trump state law. Mr. Fenrich indicated that if the city's laws trump the states laws, in this case, then wouldn't we defer to the civil service commission tomorrow and let them know what Ms. Jones' concerns are in order for them to address. If you bring someone outside into this and hold off the testing and then there is a disagreement and it turns out that our laws supersede anyway then why not just let them do their job. Ms. Jones stated that they can do that but if its determined that it wasn't done properly then we have to pay \$9,900 again. Mr. Stibich indicated that is her fear. Mr. Fenrich stated that is a legitimate fear but if they follow our rules and our rules win then it's kind of a moot point. Ms. Jones replied that what she is saying is that the commission didn't even always follow our rules. Mr. Gorski stated that he believes what Ms. Jones, and other members of Council have also brought this up, is that he believes Ms. Jones concern is she wants to make sure that the rules are being followed at this point. He can say as well that over the past three weeks we have asked a number of questions regarding this process and everything that has been going on and he thinks that we are still at a point where we don't have all the answers or we don't necessarily have answers that we are 100% comfortable with moving forward. So, he thinks the suggestion of having someone from the outside who is well versed in civil service law, take our charter, our civil service rules, and the Ohio revised code and come to a determination about who is right and who is wrong, that could be a savings for us rather than us spending money on a fire chief's testing process only to find out later that we didn't do something and the test would become invalid. So, he thinks it is an idea that has merit. Mr. Stibich stated that he is happy that Ms. Jones clearly and calmly enumerated her thoughts and questions on this issue, now there is a list of questions that need to be answered.

Mayor Graven stated that he understands Councilwoman Jones and Councilman Gorski's concerns. Speaking of experts, in 2016 there was a blue-ribbon panel appointed and the chair person was Judge John Donnelly, who is an expert, and this committee studied civil service. On August 3, 2016, Judge Donnelly stated "the idea is to try and keep politics out of civil service appointments," he went on to state that "the problem with the Olmsted Falls system is that it does involve politics." Judge Donnelly also stated "there could be a compromise for directors but Council should stay out of civil service because it turns into politics whether you believe it or not." Mayor Graven does understand the concerns and stated that they can attend the civil service meeting. Ms. Jones replied both sides. Mayor Graven replied he agrees, both sides should stay out this which is why he does not attend civil service meetings. The civil service people are volunteers and citizens and have a job to do and they need to be kept separate and we need to keep political pressure off of them. Ms. Jones replied she agrees wholeheartedly with that 100%, which is why she wants an independent party. Mr. Stibich stated that when Judge Donnelly appeared before Council and made these statements, we were discussing charter amendments. Specifically, he was addressing the charter provision at that time that said any appointment to department head, fire chief or police chief, even though it goes through civil service, the appointment is made by the Mayor and approved by Council and Judge Donnelly was speaking to the fact that he thought that the approval by Council was bad and that it should just be an appointment by the Mayor. The voters approved that Charter amendment and the Mayor now has the

power to appoint the fire or police chief and Council has no right to approve or deny that appointment.

Ms. Jones replied she understands that and just wants to make sure that the process is good in selecting and that we get the best qualified person and that we don't end up with any challenges or having to give the test a second time. Her concern is when the assistant law director at the time Mike Dolan stated that if you change the rules it has to be approved by Council but the law director says he doesn't agree with that and does not think Council should have to approve them when our charter says otherwise. He contradicted the assistant law director and she is concerned that he is not putting his personal opinions and advice into civil service when the legal counsel is there to answer questions. If you read the minutes for January and from February, which she listened to the audio, it feels like the law director is running the meeting and not the commission. They are supposed to be the commission and then legal answers their questions but doesn't guide them or tell them. That is her concern because she wants to keep it completely non-political. Mayor Graven indicated that Mr. Bemmer will return on Friday and if she would like she come in and speak with him. Ms. Jones replied that she does not know if her and Mr. Bemmer are the two people that should be put into a room to talk about this, she thinks some independent person should.

Mr. Stibich indicated that Ms. Jones stated her questions and civil service will meet tomorrow and he is sure these questions will be brought to their attention. Ms. Jones indicated that she will attend the meeting as well as the liaison. Mr. Stibich asked if she was fine with that because if we need to meet for a Council work session that can be arranged. Ms. Jones replied she does not want it to be after the exam on Saturday. In the Ohio Revised Code, it states "public notice of holding a promotional examination for a position or positions in a fire department shall unless waived by all persons eligible to participate be published not less than ..... 30 days .... a source material be readily accessible to the exam" and you have to print it and post if it is a written and oral and if it is written where the source material will come from and it doesn't state written; even if there is a written part of the assessment there are several parts to the exam. Actually, Westlake Fire Department explained to her what an oral was and what a written was and the assessment and some even do physical assessments, depending on what level, it is a complex issue. Mr. Stibich asked if postponing the exam is something that civil service could discuss tomorrow. Mr. Castele replied that they could. He stated that what Ohio Revised Code 124.45 states is that a written testing component shall be part of the process and what he has been having trouble researching is finding a definition of what is a "written testing component" does that mean a written test like a multiple-choice test that could be fed through a scanner and graded or does this mean written essay questions. Ms. Jones replied she does not know either but Ramsey could answer some of the questions, or whoever is giving the test. Also, when you read promotional exams for the position of fire chief or police chief, they comprise 150 questions but for lieutenant there are 110 and you can take the 150 and apply for both positions and they talk about how you would grade and rate them. Some of this is implied in here as she didn't read it thoroughly. Mr. Castele indicated that what Ms. Jones is referring to is an example of how you might grade a test. Ms. Jones replied that's an example on grading but she is saying that she does not know what the intent was, she knows typically as a standard procedure for a written component for a fire chief exam is all of those questions and they do know the source materials to study, and yes, she would want her fire chief to be up on the current rules and regulations. The point is it needs to be defined and it wasn't defined and these people weren't told of a written component and it says 100% will be oral, but, maybe she is wrong and maybe she is misinterpreting everything that is why she wants an independent person to say this is okay and it is okay that the firemen were not given the opportunity to see if two or more wanted to apply ahead of time. Mr. Castele replied that he will not pretend he

knows everything and if Ms. Jones has someone in mind that she has spoken with he would be more than happy to discuss this with them personally.

Ms. Duncan stated that the civil service meeting she attended the two gentlemen that were present did discuss 124.45 and it seemed to her, not having been at prior meetings and not reading the minutes that they were surprised that they would not be able to do this entirely orally. There was a considerable amount of discussion over the written portion, so she is sure this will need to be revisited. Whether there has to be a public notice, it would seem to her that it would be, but it will be up to the civil service commission to determine that. They are aware of a problem. Mr. Fenrich stated that Council should not have a say other than to observe. Assuming the Commission decides to go ahead with the testing what is plan "b" if you are not comfortable with that as there is only a couple of days before the test takes place. If they say they want to postpone the test and agree that this is the best idea then it gives Council some breathing room to do your homework or whatever needs to be done. We really should not be doing this they should be doing this, this is not our job. Again, what the Mayor referred to earlier and what you alluded it's not our job we are not supposed to be involved with the civil service at all. Mr. Stibich replied that Ms. Jones has seen some things that do not seem right and she is pointing them out. Mr. Fenrich stated that it is not okay for Council to come up with solutions, answers or suggestions. Ms. Jones stated that she is not coming up with solutions she is looking for an independent answer.

Mr. Haun indicated that his issue goes back to another issue, Council will use the abatement ordinance to squash the lawsuit with one of the private property owners of the bridge but you will not use that ordinance to squash the safety issues for the rest of the residents. Mr. Stibich indicated that this is a different topic. Ms. Jones indicated that she is sure that the city's legal counsel will figure out this issue. Mr. Castele indicated that he will speak with Mr. Bemer.

Mr. Gorski stated that again, this is the third time in three weeks we have discussed this issue. He has reacted strongly a couple of times when the word politicized has come up because he does not inherently see the action that members of this Council are taking as political. He understands what the Mayor is stating and understands what Mr. Fenrich is saying wherein Council is not here to provide solutions for the civil service commission. But also, as was previously mentioned, we have seen a number of issues where we have been compelled to ask questions and again, he is certifying that he is somewhat ambivalent about the answers we have gotten to those questions. So, he understands that this walks a fine line. Mr. Stibich replied that Mr. Gorski would like confidence when he is given an answer that the answer is correct. Mr. Gorski replied yes, and he does not feel that he has reached that point. More to the point he is trying to make, he thinks a term like politicize when used in this context ends up sounding or reflecting that we are in disagreement with someone therefore it is inherently political therefore it is inherently vindictive. He has said before and will say again that is not necessarily rhetoric he likes or appreciates because he feels that this is him doing his job as a member of Council by asking these questions and by considering all of the possibilities. Again, as he said he understands the Mayor's point and he certainly has no animus towards him or towards what he is attempting to accomplish but, it is not rhetoric he likes or appreciates. Mr. Stibich replied and it is not political. Mr. Gorski replied no, he does not feel what he is doing is political. Mayor Graven stated that for the record, he used a direct quote from Judge Donnelly, those were his words not his. Mr. Gorski replied absolutely, but the Mayor has said political himself as has Law Director Bemer. Mayor Graven replied true, he has said it and we are all politicians whether we like that term or not. Mr. Stibich replied that we have all made that statement. Mr. Gorski replied certainly, but just because we are in government does not mean government is always political.

Mayor Graven indicated what he believes Judge Donnelly meant was that there are three branches of government and he just wanted the legislative and the executive branches to be careful. Mr. Stibich indicated that it does not hurt to ask the questions and the way Ms. Jones did it tonight is the proper way to do it.

Mr. Fenrich indicated that he wants to be clear, he thinks a million questions should be asked but not offer suggestions for the answers. We should not give them a multiple choice for answers we should ask them the questions and let them come up with their own answers.

Mr. Stibich asked if there was any further discussion. Ms. Jones replied no, her issue is that Mr. Bemmer was bringing up recommendations for them to approve and they should have come up with them and asked for legal counsel. For example, when he told them that he did not think anyone at the fire department was interested in the chief and so he recommended that they go outside, but no one actually put it to the fire department and gave them time to respond, and it is her understanding that there would have been two or more, but we will never know because it wasn't put to them. She is saying that we should go through all the steps.

Ms. Jones is recommending that Council ask for the administrative judge, every year civil service files with the state on their rules and everything, and she wants to make sure that everything is being followed. There was no politicizing when recommendations were made to ignore the ordinances or recommendations were made that Council didn't have to approve rules which is in direct violation of our charter. She wants to make sure that they get the proper advice in relation to our charter and not just based on personal opinion. Mr. Stibich indicated now Ms. Jones suggested it Council should consider this issue at our work session in two weeks so the rest of Council can express their thoughts if an independent person should be hired.

Mr. Haviland asked if Ms. Jones was looking for this to happen before Saturday's test. Ms. Jones replied that she is hoping civil service discusses this tomorrow because she does not want us to spend \$9,000 or \$10,000 because someone complains and it turns out that things were not followed and we have to do it again. It is a very long and tedious process. Mr. Stibich indicated that he does not believe this particular suggestion is doable in the next three days. Ms. Jones replied that no one would be able to look at it before then or ask questions. Mr. Stibich indicated that these issues could be discussed at the next work session. Mr. Gorski stated that he understands that Mr. Castele and Ms. Jones will be present at the civil service meeting and he would ask that this discussion and previous discussions make it to the members of the civil service. Ms. Jones replied that it did, she listened to the audio of the last meeting and she would like to commend Ms. Duncan because when the civil service commission asked what the Council discussed at their work session it was sort of presented to them like it was no big deal, but Ms. Duncan interjected and gave them Council's concerns and she would like to thank her for that.

**Such other business that may come before Council - None**

Mr. Gorski moved to **adjourn**; Ms. Nicolay **seconded**. Poll: 7 ayes; 0 nays. **Motion carried**. The meeting adjourned at 9:01 p.m.

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*Paul Stibich, Council President*

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*Angela Mancini, Clerk of Council*