

CITY COUNCIL MEETING – MONDAY, NOVEMBER 28, 2011

The Council of the City of Zanesville met in regular session at 7:00 p.m., Monday, November 28, 2011 in the City Council Chambers, 401 Market Street, Zanesville, Ohio.

Mr. Vincent led those present in the Lord's Prayer and the Pledge of Allegiance to the Flag.

The following members of Council answered Roll Call: Mr. Tilton, Mr. Zakany, Mr. Baker, Mr. Tarbert, Mrs. Gentry, Mrs. Norman, Mr. Kilpatrick, Mr. Hutcheson, Mr. Roberts, and Mr. Vincent.

APPROVAL OF MINUTES

Mr. Zakany moved to accept the minutes as printed, seconded by Mr. Tilton.
Motion carried.

COMMUNICATIONS, REPORTS, AND RESOLUTIONS

Resolution No. 11-81 - Introduced by Council – A resolution opposing centralized tax collection in the State of Ohio.

Mr. Tilton moved for first reading, seconded by Mr. Roberts.

Mr. Vincent: Mr. DuBeck, would you like to speak on this?

Mr. DuBeck: This is something that the Ohio Municipal League is working on ever since the state started Gateway which is a way to facilitate the collection of taxes by businesses that have multiple locations throughout the state. Instead of having a repeat file of 25 tax returns, they can file one in Columbus and then Columbus distributes the money to us. The state agreed to do that for free, but I am not naïve. The state does nothing for free. The people in most of the cities in the state of Ohio realized a long time ago that the purpose of this was to eventually get their hands into our pockets. There was language in SB5, that most people were not aware of, looking to collect money. We are saying leave us alone, you are already taking the money from us that you use to give us. The problem we have now is whatever you collect for us, we probably will only see 90 – 95% of it back, instead of the 100% we will collect now. We are saying leave the municipalities alone. We are best at taking care of our needs. We know what are needs are and Columbus does not.

Mr. Vincent: It is Ohio Municipal League's recommendation to pass a resolution verses letters?

Mr. DuBeck: I have four resolutions from cities in my office. I had a visit from a representative from the Ohio Municipal League about three weeks ago and he brought copies of the resolutions from various cities that have forwarded on to Columbus. This is just a way of making our voice heard. When I attended the Treasurers' Conference in Cleveland in October, Sue Cave the spokeswoman for the Ohio Municipal League, knows everything that is going on in Columbus. She knows what the state trying to do and all the cities are banding together. We need to make a stand and keep our own business here.

Mr. Vincent: So their recommendation was to send a resolution.

Mr. DuBeck: This is something that all the cities looked into and are sending resolutions to the governor.

Mr. Vincent: This legislation needs to go through the three readings and be signed by June 30th which was months ago, so it is in effect. I was concerned about the wording in the second whereas, "legislation may be amended before final consideration". That part concerns me. There is a lot of information out there and I spent an hour looking through 900 pages.

Mr. DuBeck: That is the best way to slide it in.

Mr. Vincent: I saw nothing in there related to this.

Several people talking at the same time.

Mr. DuBeck: They talked about it in October when I was at my meeting and the gentleman from OML that was in my office about three weeks ago.

Mr. Vincent: There is nothing in HB 153.

Mr. DuBeck: Yes, we do not want them to proceed with taking more money. Let me explain to you about the Gateway. They had one person that was able to answer questions on issues that we had with the Gateway. I spent 10 years in the Income Tax Department before I took this current position; I had the opportunity to deal with Gateway for 3 years before I became the Treasurer. There was one gentleman that was able to answer any questions we had concerning moneys that we did not receive or duplicate moneys that we received, left and there was no one that could answer any questions now. If you have a problem you are on your own.

Mr. Tarbert: I want to know if there is any advantage in the timing of this. Would it be helpful if we waived the readings and passed it as normal legislation or is the timing not right?

Mr. DuBeck: If you would pass it as an emergency, it is one thing that I could get presented to the Governor sooner than later. It is something that OML is waiting for me to email a copy of our resolution once it has been approved.

Mr. Tarbert: I do not know that it qualifies as an emergency, but I would move to waive the readings and pass as normal legislation.

Mr. Tarbert moved to waive the three readings, seconded by Mr. Baker.

R. C. to waive
9 Ayes – 0 Nays
Motion carried.

Mr. Tilton moved for passage, seconded by Mrs. Norman.

Mr. Vincent: I am still uncertain talking about the legislation being submitted for final considerations if that has any impact or not. We are talking about legislation that has already been passed. This makes a statement, but I think the wording is a little light.

Mr. DuBeck: Understood

R. C. for passage
9 Ayes – 0 Nays
Motion carried.

Resolution No. 11-82 – Introduced by Council – A resolution in support of Housing and Urban Development (HUD) Community Development Block Grant Program (CDBG) and The Home Investment Partnership Program (HOME).

Mr. Hutcheson moved to waive the three readings, seconded by Mr. Tarbert.

R. C. to waive
9 Ayes – 0 Nays
Motion carried.

Mr. Tilton moved for passage, seconded by Mr. Roberts.

Mr. Baker: I notice in here that this is coming out in opposition to reduce the grant funding. Why is the 5% number acceptable as a reduction? Has that been proposed by anyone or is that arbitrary?

Mrs. Clapper: The biggest thing that I heard from OCCD, which is the state organization that we are members of, is that the proposed reduction is 15% to CDBG and 40% to HOME. It has been proposed at that higher rate.

Mr. Baker: So in essence, if there has to be cuts, we support the smallest of the possible basically.

R. C. for passage
9 Ayes – 0 Nays
Motion carried.

PROPOSED ORDINANCES

Ordinance No. 11-83 – Introduced by Council – Re-authorizing the proper city official to administer the revolving loan fund, and declaring an emergency.

Mr. Tilton moved to waive the three readings, seconded by Mr. Roberts.

R. C. to waive
9 Ayes – 0 Nays
Motion carried.

Mr. Hutcheson moved for passage, seconded by Mr. Zakany.

R. C. for passage
9 Ayes – 0 Nays
Motion carried.

ORDINANCES FOR ACTION

Ordinance No. 11-73 – Introduced by Council - Providing appropriations for use during the fiscal year 2012, and declaring an emergency.

Mr. Roberts moved for second reading, seconded by Mr. Hutcheson.

Mr. Kilpatrick: Last week the Budget Committee met and we worked through all of the major departments in the city with the exception of the Police Department as the chief was unable to attend due to a health issue. We did not take a formal vote as far as making any recommendations to council, but I think we had all our questions answered. My opinion would be that this is a preliminary budget would be satisfactory as been presented by the Budget Director. I would not recommend waiving, but we all know that there are a lot of things up in the air with the union contracts and numerous material changes to the final budget.

Mr. Vincent: Were all of council's questions answered?

Mr. Kilpatrick: I think so. If any questions come up, certainly they can come through me and I will get with Mr. Raines.

Mr. Zakany: I was at that meeting and I got very little out of having any input it sitting in the audience. I recall that different departments and the councilmen could ask that person directly. As I sat out there, I did not get much out of it and I was disappointed.

Mr. Vincent: Did you have questions?

Mr. Zakany: I felt like the input that I think I should have, was not there. You need to have input while it is going on.

Mr. Vincent: Mr. Kilpatrick is the chairman of the Budget Committee. We did things differently this year. We tried something different and I think there were opportunities for questions to be asked and answered. There is an opportunity now if you have questions and you can bring them in here or you may call the offices during the week to get you answers.

Mr. Zakany: The Police Chief used to tell us about his vehicles, how they need to be improved, and how long they would last. How much they would cost and the conversation would go back and forth.

Mr. Vincent: The Police Chief was not here, but everyone else was here and there was discussion like that during that meeting. They talked about what their needs were and Mr. Kilpatrick asked if they had some items that were needed. If you would like, we can ask the Chief of Police to come to the next meeting to answer some questions concerning his budget.

Mr. Zakany: That would be a start.

Mr. Baker: I would like to say to Mr. Kilpatrick and the Budget Committee did an admirable job at this stage of the game. I am sure you will see a lot of changes on down the road as far as getting a permanent budget for the next fiscal year in place as he already stated. I for one, received adequate answers for all the questions that I had from the various department heads. I think it was an admirable job.

Mr. Vincent: Mr. Raines, is there anything that Council has missed out on by changing process?

Mr. Raines: No, I felt that they asked any questions they wanted to other than the police department. I was asked questions and I would give you answers.

Mr. Vincent: So nothing you feel we should do different?

Mr. Raines: No, not really.

Mr. Vincent: Did you get additional questions after the meeting?

Mr. Raines: No.

Motion carried.

Ordinance No. 11-77 - Introduced by Council – An ordinance to revise Section 181.10 of the Codified Ordinances of Zanesville.

Mr. Hutcheson moved for second reading, seconded by Mr. Tarbert.

Mr. Zakany: I was looking at 18% finance charges annually and another 2% charge for late fees. That is a full 20%.

Mr. Vincent: Mr. Zakany, you are looking at two separate things. The first is the 18% that has to do with employers. Then the 2% is for the tax payers, is that correct?

Mr. DuBeck: The 18% per year is on the payroll withholding that we charge employers who are late submitting payroll withholding.

Mr. Zakany: Who is responsible the employee or employer?

Mr. DuBeck: The employer. When I work for you and you have a business in the city, the law states you must take city tax out of my check and you must remit it to the city of Zanesville by the end of the following month. And if you are late, you pay the penalty, not the employee.

Mr. Zakany: That is just like Social Security.

Mr. DuBeck: I am not old enough to get it yet, so I will have to agree with you.

Mr. Baker: What have the late fees accrued to in the last fiscal year if this had already been implemented?

Mr. DuBeck: I cannot tell you that. I honestly do not know. We were getting 12% per year, ½% penalty, ½% interest on balances, most of the balances we are getting those caught up, which we have. Is it going to be a substantial amount of money? I doubt it very much. This is more of an encouragement to file than anything else. Instead of being on the bottom of the list when it comes to paying bills because the city of Zanesville is only charging 12%, but my credit card is charging 18%, so I need to pay them first. We are charging 18% interest and then another 24% in penalties.

Mr. Baker: This is the stick approach not the carrot.

Mr. Vincent: Who makes up the Board of Review?

Mr. DuBeck: It would be the mayor, income tax administrator, and one appointee.

Motion carried.

Ordinance No. 11-78 - Introduced by Council – An ordinance to revise section 181.03 of the Codified Ordinances of Zanesville.

Mr. Tilton moved for second reading, seconded by Mr. Roberts.

Mr. Kilpatrick: I had voted against this ordinance at the first reading, subsequently the treasurer and I have discussed this further. We have exchanged information and opinions. I am still opposed to this change with the provisions for the carry forward of operating losses. Let's say a business loses

\$300,000 this year and then makes \$300,000 next year under this scenario they are going to pay 1.9%

....

Mr. DuBeck: May I address that? If you have looked at our city tax return any corporation that files an 1120 or 1065 there already built in their loss carry forwards. When it is filed with the city, they file it on their 1120. The person that gets hurt by this more than anyone would be my income tax administrator who boards horses and she runs a schedule C business. The I.R.S. does not allow her to carry her loss forward. That is who it is going to affect more than anyone. If you are doing an 1120 you already have that built in with either creative accounting or whatever. It is not going to affect any corporation or business that is incorporated. This is probably more landlords. People that have rental property that use it more as a hobby than a business that continue to have loss, after loss, after loss; then they have a good year and they take the last five years as losses. It is not feasible anymore to keep doing that. I owe you an apology from two weeks ago when I was not thinking properly, but if you are a corporation and you file 1120 you already have your built in loss carry forward.

Mr. Kilpatrick: In the case of the individual I am aware of what you are talking about as far as the rental properties as I do remember when my wife and I had a couple of rental properties we would were not allowed to offset those losses against my earned income.

Mr. DuBeck: That still holds true, I am not changing that part at all.

Motion carried. Nay-Mr. Kilpatrick

Ordinance No. 11-79 - Introduced by Council – An ordinance to revise section 181.11(h) of the Codified Ordinances of Zanesville.

Mr. Tilton moved for second reading, seconded by Mr. Hutcheson.

Motion carried.

Ordinance No. 11-80 - Introduced by Council – An ordinance establishing sanitary sewer rates.

Mr. Tarbert moved for second reading, seconded by Mr. Hutcheson.

Mr. Baker: Mr. Sims, I know that we did not have many questions last time around on this, could you talk about the need for this; why it is being proposed; what its goal is? I assume the goal is to make the sanitation department self supportive, am I right?

Mr. Sims: It is not sanitation, but the wastewater plant. It is currently self-supported. The only problem is we have a new compliance schedule that is tied to our sewer separation long term control plan. They gave us until 2022 to complete some \$27 – 30 million worth of work, plus other work we have that is not tied into the plan of mandating the separation. This rate increase will give us a 2% increase to the general revenues of the sewer operations fund. The other \$5 will go into a specific line item for the CSO design and construction program. This will help offset loans. The entire intent is for us to maintain compliance with our NPDES permit.

Mr. Baker: If someone has questions about this or questions me, it would not be too far off the mark to say that we are seeing a 2% rise in the fees you are going to be assessed plus the \$5 flat fee for compliance for the new EPA mandates.

Mr. Sims: That is correct. We put our best argument forth with our last consultant. They tried to show that we had a high burden category on the citizens. We looked at it from the perspective of the entire duration of the plan. The EPA only looks at it in 3- 5 year intervals relative to the permit. They have mandated 8 separation projects to be designed and installed by 2017.

Mr. Baker: We did not have – what was the term that you used?

Mr. Sims: Basically it would be a high burden category or a hardship because of the percentage of sewer bill versus median household income.

Mr. Baker: The exact formula for that which operates on a point system.

Mr. Sims: It is all based on a certain number of gallons per month average that are used to base charge meeting the household income of the city involved where you fall in the spectrum of things. Just for instance, I did pull the last appendix where there was annual report done was 2009. The EPA bases all of their structure on somewhere around 7,756 gallons per month usage per account. That

varies from the single person homes to a family of 8 obviously. There were 552 cities listed. There are about 290 that have lower rates than Zanesville and about 260 that have much higher rates. We are still right in the middle prior to our increase. You might drop off 10 or 15 more after the increase.

Mr. Baker: Are we close to having a high burden?

Mr. Sims: We claim at the end of the cycle of the full 2020 is what we were arguing when we met with the EPA. They contend we are only about 1.48%.

Mr. Baker: Which means in real terms?

Mr. Sims: In real terms we are 2/3 – 3/4 of the way there but just not quite there. I have been reassured by our consultant that we have on board now that with this rate increase, we will be more likely to be able to obtain state water and sewer grants through CDBG program because they utilize both water and sewer combined. Their usage is based on a lower number of less than 5,000 gallons a month. There is \$500,000 a year available through that fund, as long as the funds are available. Unfortunately, we did apply for loan forgiveness through DEFA, which is the federal division of the Ohio Water Development Authority, we did not meet the cut off for the amount of loan forgiveness they had. There were higher needs with higher burdens ahead of us that received some forgiveness on their upcoming loans.

Mr. Zakany: The catch basins in the city that are on the water bill, that goes to streets or sanitation? The money for the catch basins?

Mr. Sims: That is storm sewer fund. You pay a pittance every month or by-monthly for that. This can only be used for storm sewer projects and it has to have Council approval to utilize it.

Mr. Hillis: I just want to add to what Mr. Sims was saying. When we were negotiating with EPA trying to get an extension on our compliance schedule that was one of the things they threw out at us was before we could be considered for any type of extension, we were going to have to raise our rates. The argument was funds for us to pay for this and not get an extension is for us to raise our rates. If we do not raise our rates, we will not qualify for an extension the next time we ask either. It really has put us in a position that if we do not ask now, the next time we ask for an extension, they will demand a much higher rate increase.

Mr. Vincent: They are forcing our hand to make the raises happen for these issues then they put fines on us.

Mr. Hillis: They are doing this to cities all over the country and in Ohio.

Mr. Sims: I did check with our local Southeast representative and of the few cities that he deals with in his district, Newark is in similar situation as we are. They are on a five year plan for installation of interceptors, eliminating CSOs, and the same thing they are proposing to us is just collecting the entire storm overflow and sending it to the plant for treatment which will drive your operational costs through the roof. They are asking them to submit a phase 2 at the end of 2016. They are asking us for immediate CSO separation on the small areas that are old and need separated. In this first five years, while we are doing that, we have to monitor the larger basin areas, such as the entire north end, some of the downtown area, and 4 or 5 basins that are large volume. We have to put flow sensors in to measure the volume, determine how many gallons are going to the plant or escaping into the river. We send it to the plant or not; or do we want to send it to the plant, what would be more feasible, separation or building these huge storage tanks metering it to the plant and pay more in operating costs.

Malta was given 10 years, it is a small village, probably just as bad on them with their population; Woodsfield was given 10 years; McConnelsville was given 13 years, which is similar to what Zanesville received; Portsmouth just decided to “thumb their nose” at the EPA and they are now dealing with the USEPA. Our local representative said that is not position you want your city in, because they step you through the paces quickly and they are very stringent. A little misnomer I may have put out at the Public Service Committee meeting, I had heard that Columbus was successful in litigating or strongly negotiating with the EPA, so I did email Paul Novak, Environmental Manager at the state office as far as the CSO Program, indicated that the plan for Columbus was approved in 2005, since then they have raised rates averaging 10% per year for the last 5 years with additional increases planned. They are building a major tunnel and they also had to complete projects that expanded the capacities of both their plants by 50%. We had \$25 million in the upgrade to our plant

and we just went from 7 to 11 mpds, so you can imagine the process Columbus has gone through. They did not receive any favors. All additional projects for the CSO's are to be completed by 2025, so they have 20 years out of it, but it probably because they have close to \$200 million worth of separation work.

Mr. Vincent: If we were not overflowing into the river during these heavy storms, would we be under the pressure to do this? Could we be able to handle it through our treatment facilities?

Mr. Sims: That is correct. The problem is it may be a little extra cost savings to not "blow up" the streets to construct the lines, but first you need a football size place to put a holding tank such as one of our clarifiers or high rate basin that we have down there now for the new upgrades which are huge. The other thing is it does not help us with our county interagency agreement because it is based on total plant volume. The higher our flow at the plant the lower the county's rates. It is in our best interest as a city is to eliminate the combined sewers and not take more to the plant. As time goes on, we will have to do a cost benefit analyses on each of those larger areas to make that determination.

Mr. Vincent: Then the concern that you shared with me is the potential of the EPA to require us to treat the storm sewage before sending it off into the river.

Mr. Sims: I would not be surprised if something of that nature comes to pass. Something I will have to bring to council soon is our new updated construction and water management ordinance. We are in the EMS4, but we are considered in with the big cities to start minimizing the heavy amounts of suspended solids getting into the streams. We need to increase street sweeping, grass swales, collection devices to catch the debris and things like that.

Motion carried.

Ordinance No. 11-70 - Introduced by Council – An ordinance authorizing the proper city official to retain the law office of Bricker & Eckler LLP as legal counsel for the city regarding contractor claims at the water plant, pay current invoices, and declaring an emergency.

Mr. Zakany moved for third reading and passage, seconded by Mr. Kilpatrick.

R. C. for passage

7 Ayes – 2 Nays – Mr. Hutcheson and Mr. Roberts

Motion carried.

Ordinance No. 11-72 - Introduced by Council – Amending Ordinance No. 97-127, as amended, which authorized a maximum schedule of positions.

Mr. Tilton moved for third reading and passage, seconded by Mr. Hutcheson.

R. C. for passage

9 Ayes – 0 Nays

Motion carried.

PRIVATE PETITIONS AND COMMUNICATIONS:

Mark Bullion, WHIZ Reporter: Good evening, Council. I just want to say this is my last Council Meeting I will be covering. Friday will be my last day at WHIZ, I am moving to Peoria, Illinois. I just wanted to thank all of you. I had the opportunity to interview most of you on issues whether it was here in Council Chambers or elsewhere, but I have learned a lot in this city and I will take that with me to Peoria. I just wanted to say thank you.

Mr. Vincent: Thank you Mr. Bullion, it was good for Council to hear that. Good luck to you.

MISCELLANEOUS AND UNFINISHED BUSINESS:

Mayor Zwelling: I want to make Council and the community aware of how fortunate we are to have Captain Miller in our Police Department. He is our IT man in the Police Department. He has started computer updates at the department; he has installed and setup over 20 new computers in the department; he installed the new server; he started records to transfer to it; he has updated to software in the cruisers' computers and has work out the connection angles; he will continue to setup process with the new server. Everyone will have to receive training by Captain Miller with the new software sometime around February, 2012. The changeover will be complete in April, 2012. Once this conversion is complete, officers will be able to complete

their reports including the accident reports on the computers in the cruisers; they will not have to come into the station to do their reports. Captain Miller is very good with computers and we are lucky to have him.

John Kunkel told you about the successful turnout there was for the Nutcracker. On Thursday December 1st the Southeastern Ohio Symphony Orchestra will present their holiday concert. It is a free concert, but you need tickets to get in. Tickets are available at Secrest Auditorium and various sponsors of this event.

On Saturday, December 3rd, the Muskingum Valley Education Service Center High School Choir Concert will take place.

On December 17th, Ticketcrush Concerts brings Lori Morgan and Pam Tillis in the Grits and Glamour Tour to Secrest Auditorium to wrap up 2011.

Ticketcrush Concerts has signed Ronnie Milsap; he has been here one time before. He is a famous performer and he will be here February 10, 2012.

Mr. Vincent: Mr. Sims, with the shorter days, earlier evenings, dampness, the sections of Maple Avenue that were not redone because of future projects, is it possible to get at least the lines painted for the lanes in the two areas?

Mr. Sims: It would be weather dependent.

Mr. Vincent: Can we do that?

Mr. Sims: We have paint. If we do not have inclement weather, it could be possible. We will need some days at least in the 50's. I will be happy to mention it to the Street Department.

Mr. Vincent: We do have the redistricting Meeting next Monday, December 5, 2011. Council, do you want to set up the Secrest Project meeting before or afterwards? We are meeting at 6:00 pm.

Mr. Baker: What was that again?

Mr. Vincent: Our meeting for ward redistricting next Monday, December 5th at 6:00 pm. Do you want to talk some more about Secrest? We will see what happens.

Mr. Tilton moved to adjourn, seconded by Mr. Hutcheson.
Motion carried.

Meeting adjourned at 7:48 pm.