

## COUNCIL MINUTES

April 17, 2017

Council Chambers

7:00 P.M.

**7:00 P.M.** - President Ellington called the Monday April 17, 2017 Newark City Council Meeting to order.

**ROLL CALL-** Ms. Hall, Mr. Johnson, Mr. Rath, Mr. Mangus, Mr. Blake, Mr. Bubb, Mr. Cost, Mrs. Floyd, Mr. Fraizer

**INVOCATION** – Mrs. Floyd

**PLEDGE OF ALLEGIANCE-** President Ellington

**CAUCUS-** Motion by Mrs. Floyd to excuse Mr. Marmie, second by Mr. Rath. Motion carried by acclamation

**President Ellington-** under miscellaneous tonight we will discuss using Rule 11 for a piece of legislation.

**MINUTES of April 3, 2017** Motion by Mr. Rath to approve the April 3, 2017 Newark City Council Minutes as presented and the reading be dispensed with in view of the fact each member of Council has received written summary of same, second by Mr. Cost. **Motion carried by acclamation.**

### APPOINTMENTS

**Mayor Hall-** reappointment of Bill Wilson to the Heath-Newark- Licking County Port Authority Board of Directors. His new four year term will begin June 1, 2017 and will expire May 31, 2021. - **No objections.**

### REPORTS OF STANDING COMMITTEES

Finance- **Received & Filed**

Service- **Received & Filed**

Capital Improvements- **Received & Filed**

Personnel- **Received & Filed**

### REPORTS FROM CITY OFFICIALS

**Stephen E Johnson-** operating report for the period ending March 31, 2017. - **Received & Filed**

## PUBLIC HEARING

**By: Rath, Marmie, Cost, Johnson, Floyd**

**Ordinance No. 17-04** AN ORDINANCE AMENDING ARTICLE 6: GENERAL REGULATIONS; ARTICLE 7: NON-CONFORMING USES, BUILDINGS / STRUCTURES, LOTS; ARTICLE 86: ACCESSORY STRUCTURES; ARTICLE 88: FENCES, WALLS AND SIMILAR STRUCTURES; ARTICLE 115: PUBLIC & PRIVATE SWIMMING POOLS OF THE ZONING CODE OF THE CITY OF NEWARK, OHIO.

**President Ellington opened the public hearing and there were no comments from the public either for or against the proposed ordinance. President Ellington closed the public hearing.**

**Motion by Mr. Rath to adopt Ordinance 17-04, second by Mr. Johnson**

**Mr. Rath-** Mr. President do we have anyone here to discuss 17-04?

**President Ellington-** Brian Morehead is on vacation, I don't see Mr. Rhodes but I have his recommendation letter here.

**Motion by Mr. Rath to table Ordinance 17-04 for two weeks since it isn't in the packet and there isn't someone here to discuss it, second by Mr. Fraizer**

**Motion failed to table Ordinance 17-04 by a 5-4 (Mr. Rath, Mr. Bubb, Mr. Johnson, Mr. Fraizer) vote.**

**Mr. Cost-** is there any reason we need to pass this tonight or could Mr. Rhodes speak to it?

**Mr. Bubb-** with pool season coming up before we vote on it I'd want to hear from someone on it.

**President Ellington-** there are some questions on Ordinance 17-04 for our public hearing tonight that went through the Planning Commission, nobody has it in their packet but is there any reason that it has to be passed tonight or would you like to weigh in on that since I have your letter here?

**Director Rhodes-** you can certainly delay it if you want. This is zoning codes changes that we have been working on for the past year, year and a half. This is a working document, several of us about 8-9 years ago we dove into the zoning code and updated it for the first time in 30 years. Our commitment was that we wanted to make the Zoning Code like a working document and when we get a list of 8 or 9 items that need to be changed we change those items and bring them to Council as a packet rather than one at a time. This has been through Planning Commission and this is the third public hearing because we had two in Planning Commission. There's nothing really controversial in this it just kind of cleans up things.

**Mr. Fraizer-** for non-conforming use, if a property say a gas station that is in transition is waiting on a liquor license and they don't open up and it is supposed to be grandfathered in as a residential or however it was formed before would that impact the business? Would it default to the conforming use that it was supposed to be?

**Director Rhodes-** there is an issue of what you call an illegal non-conforming use. Let's use the gas station on the corner of 11<sup>th</sup> Street and Granville Street under the current zoning that wouldn't be an allowable use. It's not a gas station now and it hasn't been in years. Somebody buys that and wants to open a gas station there they would have to go to the Board of Zoning Appeals and ask for a variance. They would have to put together a business model and convince the Board to give you a variance. There is an avenue there for somebody to get a variance if it makes sense. That is the one thing this does which protects the neighborhoods and people that bought into an area and wouldn't want a gas station there even though they have one that has been closed for 30 years.

**Mr. Rath-** let me ask that same question in a different way and this is a hypothetical, let's say I want to buy Little Bear, it's a grocery store and I want to open up a grocery store and the way that zoning reads it shouldn't be a grocery store. The way this reads is that if it is vacant for a day, vacant at all the zoning reverts back to what you said the zoning was a long time ago. If I buy that as a grocery store and I can't open up the day of closing does that mean that I can't have a period of time to open up that business?

**Director Rhodes-** the spirit of this is to truly do this in a public form. The spirit of that grocery store as an example, if people didn't like it under the old code they could have just got a certificate to put a grocery store in. With this update they would have to come into Planning Commission and state Lil Bear was a grocery store for 30 years, it closed and now it is zoned residential and this is all hypothetical, then they would go to the Board of Zoning Appeals just like you would if you wanted to build a garage and wanted to encroach upon a setback. This further cleans up non-conforming uses because they have to bring in a business plan that makes sense to grant the variance while protecting the neighborhoods.

**Mr. Rath-** I can do that as a potential business owner I don't have to wait until I buy one

**Director Rhodes-** that is correct. What we would hope that is people would do their due diligence before they buy a property.

**Mr. Rath-** well if they don't that is on them not us.

**Director Rhodes-** that is correct but they do have an avenue to get the variance and have the business but the avenue has to be done in a public light and pass the smell test.

**President Ellington-** with the old rule there was a two year window.

**Director Rhodes-** yes, the old rule says that those hypothetical places could set dormant for up to two years and the day prior to two years someone could go pull a permit without having to come to the BZA, without having to come to the Planning Commission and do anything. People might say it is an extra step but if you lived near one of these properties you'd like to have that opportunity. When you come to the BZA Autumn notifies everyone in a 300 square foot radius about the requested zoning change and people can then come in and have their input.

**Mr. Cost-** for the record David there is another section of this that we have all discussed at length and I am assuming it is going to come to us at a later time?

**Director Rhodes-** yes that would be the sign section, we found in that particular section it was more controversial. What we put forth here is what we would call the easy stuff. There were more opinions on the sign section so it needed more discussion. We are going to bring the sign ordinance just by itself because as you may remember there was great debate about billboards.

**Mrs. Floyd-** this just seems to me that this has been here for quite a while and I heard more questions asked tonight than what were asked during the committee meeting. Al don't think that we went into it with as much detail as when Brian was standing here, I'm ready to vote.

**Director Rhodes-** we would appreciate it if you got it out.

**Mr. Rath-** at that point in time we were focused on pools. We asked plenty of questions but it was on pools. Quite

honestly somebody else brought this issue to my attention and that is why I wanted to get a few more questions. The reason I wanted to have it tabled was because it wasn't in front of everybody so you don't have an opportunity to look at it. I wanted people to have that opportunity if they wanted to which they don't so that's fine.

**Mr. Fraizer-** temporary pools, does it still require a fence? What is your interpretation with this legislation regarding temporary pools and what are the restrictions in order to protect children?

**Director Rhodes-** first I am going to claim that we worked on this so long ago that I don't remember verbiage.

**Law Director-** temporary pools as Brian described them to us are exempt from this proceeding. So when you go to Walmart and you buy a \$99.00 pool the requirements with regards to fencing are not here. In the past the code was silent on that, the difference here is to state that there is a difference between a temporary pool and a permanent pool and a temporary pool are exempt from the fencing and other provisions.

**Motion to adopt Ordinance 17-04 passed by a vote of 9-0.**

#### **COMMENTS FROM CITIZENS**

**Sue Gray, 100 Penny Ave-**spoke of problems with drugs in their neighborhood and neighbors working on vehicles and dumping oil in the alley and blocking the alley. She stated that an officer called her and assured her that the neighbors were running a business on the up and up because they were buying these cars on Craig's List and then cutting them up and selling them. She stated that they live in a residential neighborhood and this business should be allowed to be run out of the alley. She also complained about a vacant lot on Penny owned by the State that is getting torn up by motor vehicles intentionally.

**Resident of 89 Dewey Ave-** re-stated what Mrs. Gray had complained about regarding the neighbors cutting up vehicles.

#### **ORDINANCES ON FIRST READING**

**By: Cost, Rath, Floyd, Johnson, Fraizer**

**17-14** AN ORDINANCE AMENDING THE POSITION CLASSIFICATION, PAY RANGE AND DEPARTMENT AUTHORIZATION TABLES OF THE DEPARTMENT OF SAFETY, DIVISION OF FIRE BY CREATING THE CLASSIFICATION OF DEPUTY FIRE CHIEF, AND SETTING THE COMPENSATION THEREFORE, AND ABOLISHING ONE ASSISTANT CHIEF POSITION BY ATTRITION.

**Motion by Mr. Bubb to waive the two day reading rule on Ordinance 17-14, second by Mrs. Floyd**

**Mr. Bubb-** this is at the request of the Human Resource Director, Mike Buskirk.

**Motion passed to waive the two day reading rule on Ordinance 17-14 by a vote of 9-0.**

**Motion by Mr. Bubb to adopt Ordinance 17-14, second by Mrs. Floyd**

**Motion passed by a vote of 9-0.**

#### **RESOLUTIONS ON SECOND READING**

**By: Rath, Cost, Floyd, Johnson, Fraizer**

**17-20** A RESOLUTION AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC SERVICE TO ADVERTISE FOR BIDS AND ENTER INTO CONTRACTS, SUBJECT TO THE APPROPRIATION OF FUNDS, FOR VARIOUS CONSTRUCTION PROJECTS.

**Motion by Mr. Rath to adopt Resolution No. 17-20, second by Mr. Cost**

**Motion passed by a vote of 9-0.**

**By: Rath, Cost, Floyd, Johnson, Fraizer**

**17-21** A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF NEWARK TO PREPARE AND SUBMIT AN APPLICATION TO THE OHIO DEPARTMENT OF TRANSPORTATION FOR THE 2017 TRANSPORTATION ALTERNATIVES PROGRAM TO PARTIALLY FUND THE DOWNTOWN ENHANCEMENTS PROJECT ON STATE ROUTE 13 (4<sup>th</sup> STREET) FROM LOCUST STREET TO WALNUT STREET.

**Motion by Mr. Rath to adopt Resolution No. 17-21, second by Mr. Cost**

**Motion to amend Resolution No. 17-21 by Mr. Rath to state in the 5<sup>th</sup> WHEREAS a 5% match instead of 20%, second by Mr. Fraizer**

**Motion to amend passed by a vote of 9-0.**

**Motion to adopt Resolution 17-21 A as amended passed by a vote of 9-0.**

## RESOLUTIONS ON FIRST READING

**By: Rath, Cost, Floyd, Johnson, Fraizer**

**17-22** A RESOLUTION AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO EXECUTE A CONTRACT FOR REIMBURSEMENT OF LEGAL REPRESENTATION OF INDIGENT PERSONS FOR CALENDAR YEAR 2017 WITH THE LICKING COUNTY BOARD OF COMMISSIONERS FOR THE CITY OF NEWARK, LICKING COUNTY, OHIO AND DECLARING AN EMERGENCY.

**Motion by Mr. Rath to adopt Resolution No. 17-22, second by Mrs. Floyd**

**Mr. Rath-** this is an annual piece of legislation that we do every year but we have an emergency clause on it in order to make deadlines to pay bills.

**Motion passed by a vote of 9-0.**

**By: Cost, Floyd, Rath, Johnson, Fraizer**

**17-23** A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF NEWARK TO PREPARE AND SUBMIT APPLICATIONS TO THE OHIO GOVERNOR'S OFFICE OF CRIMINAL JUSTICE SERVICES FOR FISCAL YEAR 2017 EDWARD BYRNE JUSTICE ASSISTANCE GRANT FUNDING.

**Held for a second reading**

**By: Floyd, Cost, Rath, Johnson, Fraizer**

**17-24** APPROPRIATING MONIES FOR THE CURRENT EXPENSES OF THE MUNICIPAL CORPORATION  
**(623, Water Projects Fund, \$1,000,000.00- Water Pipe Line Project)**

**Held for a second reading**

**By: Floyd, Cost, Rath, Johnson, Fraizer**

**17-25** A RESOLUTION AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC SERVICE FOR THE CITY OF NEWARK, OHIO, TO ENTER INTO A PURCHASE AGREEMENT WITH PARK NATIONAL BANK FOR THE LEASE-PURCHASE OF FOUR (4) CRUISERS FOR THE DIVISION OF POLICE

**Held for a second reading**

## COMMENTS FROM CITIZENS

### MISCELLANEOUS

**Mr. Johnson-** it is nice to have spring here and we're glad to have the students here.

**Mr. Mangus-** I would like to thank Director Rhodes and the Street Department for filling quite a few potholes on Granville Road and some side streets as well as helping to take care of a drainage problem on Granville Road and Sharon Valley Road.

**Mr. Rath-** called a Service Committee meeting.

**Mr. Blake-** Saturday our neighborhood clean-up will be happening and we will be accepting tires. On Saturday we meet at 8:30 A.M. at St. John's Lutheran Church then we will break up into community teams to go do our projects then come back to the church for a luncheon. Everyone is more than welcome to volunteer and participate.

**Mr. Cost-** I would like to welcome our visitors from Denison University.

**Mr. Fraizer-** it is exciting to see the continued progress in Newark with the new street lights going up. Looking forward to this year I want to commend the administration for putting their priorities where they need to be where we are purchasing cruisers, fire equipment and first responders support. I am looking forward to getting through these contract negotiations to continue to support our first responders and our safety forces by giving them the equipment they need.

**Mrs. Floyd-called for a Finance Committee meeting. She called to go into executive session to discuss the firefighter's contract.**

**President Ellington-** we are going to evoke Rule 11 which means that the minority and majority leaders have agreed to hear a piece of legislation that didn't go through committee.

**Motion by Mrs. Floyd to go to executive session, second by Mr. Rath**

**She asked that members of Council, members of the Mayor's cabinet, Mayor and the Law Director be present.**

**Motion by Mrs. Floyd to go to executive session, second by Mr. Rath**

**Motion was carried by acclamation**

**Motion by Ms. Hall to come out of executive session, second by Mr. Mangus**

**Motion was carried by acclamation**

**President Ellington-** there were no decisions made in executive session, just a discussion about Personnel.

**By: Mrs. Floyd, Mr. Cost, Mr. Fraizer**

**17-15 A** AN ORDINANCE APPROVING, ACCEPTING, RATIFYING AND ADOPTING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF NEWARK, OHIO, AND THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 109, PROVIDING FOR THE APPLICATION OF ALL TERMS, CONDITIONS, AND BENEFITS OF SAID AGREEMENT, RETROACTIVELY TO JANUARY 1, 2017; REPEALING ALL ORDINANCES AND RESOLUTIONS IN CONFLICT WITH THE PROVISIONS OF SAID EMPLOYMENT AGREEMENTS AND DECLARING AN EMERGENCY.

**Motion by Mrs. Floyd to adopt Ordinance No. 17-15 A, second by Mr. Bubb**

**Mr. Fraizer-** I know it is a long and ardent process that the administration and the Union under goes with this and all parties interested, we don't take that lightly on Council . We appreciate the Union and the administration working together in order to find a reasonable agreement which can move our city forward and provide for our safety forces. I would like to thank the administration and the union for their hard work and dedication towards this topic. I look forward to excellent service for years to come.

**Motion passed by a vote of 9-0.**

**17-15 B** AN ORDINANCE REJECTING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF NEWARK, OHIO, AND THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 109, PROVIDING FOR THE APPLICATION OF ALL TERMS, CONDITIONS, AND BENEFITS OF SAID AGREEMENT, RETROACTIVELY TO JANUARY 1, 2017; AND DECLARING AN EMERGENCY.

**Ordinance was not voted on due to Ordinance 17-15 A being adopted**

**ADJOURNMENT-** Motion by Mr. Cost to adjourn, second by Mr. Johnson. Motion carried by acclamation