

Service Committee Minutes

Honorable Council
City of Newark, Ohio
November 3, 2025

The Service Committee met in Council Chambers on November 3, 2025 with these members in attendance:

Jeff Rath - Chair
Bill Cost Jr.
Beth Bline
Dustin Neely

Absent: Bradley Chute

We wish to report:

- 1. Ordinance No. 25-35** AN ORDINANCE ENACTING SECTION 256.18 REGARDING PUBLIC IMPROVEMENT RETAINAGE PROVISIONS AND PLACING IT WITHIN THE ADMINISTRATIVE CODE OF THE CODIFIED ORDINANCES OF THE CITY OF NEWARK, OHIO

Brandon Fox, Water Administrator - Good evening. I made some notes here so I can try to capture it all. Basically, Ohio Revised Code changed recently to now require municipalities to withhold 4% retainage on large projects, so currently, or prior to that change, we withheld 8% retainage, so that retainage was, if it's a \$100,000 project, we would retain 8% of that money until the end of the project, and then once the contract was satisfied and the contractor performed all the duties they were required to do, we would release that retainage. The revised code is now only requiring us to withhold 4%, so the contractor receives more of their funding throughout the length of the project. Additionally, the revised code requires for any of that retainage to also pay interest to the contractor at the end of the contract, so if the City receives those funds, and we're withholding 8% or 4% at this time, at the end of the project we have to pay that 4% plus any interest that was earned on that money. What this legislation is asking for is to exempt the City from requiring the City to pay that interest on the retained funds. Reasons for that are, most of our projects are funded, our capital projects are funded through loan dollars, and so we don't actually receive those dollars into the City's bank account until they're paid to the contractor. So for example, like on a house loan, if you go buy a house or you're constructing a house, you get a \$100,000 loan, you're not getting all that \$100,000 up front. You're doing draws on that money throughout the length of the project. Same thing for us. When the City has a project and it's a two or three year project, when those retained funds are held throughout the length of the project, the City never sees them. So, we don't have them in our bank account to actually earn interest with those funds, with that money, and so at the end of the project if the City is expected to pay that interest to the contractor we have to have a mechanism to earn that interest in an investment and then pay the contractor if that makes sense. So, what we're looking to do is exempt the City from that Ohio Revised Code of paying the interest at the end of the project. I put together a little example. The next project we have for our long-term control plan is our 16 North project and it's a 65-million-dollar project. It's expected to take two and a half to three years to complete. The 4% retainage equates to about \$380,000 that the City would be required to pay an interest on the retained funds. So, the retainage would be about 2.5 million dollars, the interest at 5% of that over two and a

half years is almost \$400,000. So, what we're asking to do is exempt from that. There are other cities that do it, so we're not asking for an exception that others are not doing already. When we bid projects, we would make it very clear to the contractors that we are exempt from that. So, in the bid documents when we award the project, we would make it clear don't expect that the interest would be paid to you at the end of the project. Happy to answer any questions. I know that's a lot, but happy to answer questions if you have them.

Mr. Rath - Where is that 4%? So, if you start a project today, there's a three-year project, the 4% retainage, where does that 4% go to today and where is it sitting for three years?

Mr. Fox - It sits with the loan. So, right now most of our projects are funded through DFA funding, which is the state revolving loan fund, and the Ohio Water Development Authority is the one that, they're the company that awards those loans. They bond that money. They're taking that money. They're holding it, and then if I have a ...

Mr. Rath - Is it actually earning interest at that time?

Mr. Fox - Not through the City of Newark, no.

Mr. Rath - Or anybody?

Mr. Fox - I can't answer that. I'm assuming. I can't answer that. The state when they take, you know, their 500 billion dollars and they bond that, I'm assuming that they're earning some interest on that money, but I can't speak intelligently to that.

Mr. Rath - But that's one giant fund that's not singled out as Newark's projects?

Mr. Fox - No. Like this 65-million-dollar project, throughout the length of that project, if next month we have to pay a million-dollar payment to a contractor, I'm only taking 96% of that paying the contractor and then the other 4% is still being held at our at our debt. I know WDA's in their bank account.

Mr. Rath - That's due to the contractor upon completion of the contract.

Mr. Fox - Correct. Successful completion of the project. It basically provides for if, Heaven forbid, if a contractor fails to perform, then we can take those funds and hire another contractor to do what the first contractor should have done. Again, related to a house, if I'm having a house project done I'm not going to give that contractor \$30,000 to do a house repair. I'll pay 50% and then at the end of the project I'll pay the other 50%. It's making sure you're getting what you're paying for.

Mr. Neely - At the end, the 4%, we've not made interest on that, so when we're giving it back, we're giving back money we didn't earn. We're giving back just that much more.

Mr. Fox - You're exactly right. That's the problem with it. If this was a real world where we got that money up front and we were earning interest on it, I could totally see that, yeah, we should be responsible to pay because that's money that the contractor could have earned. They put it in their bank account and make interest on that. I think that's the reason for the revised code language to be that way, but we have never seen that money until we actually pay the contractor. So, at the end of the project I get that money in, the City immediately pays it to the contractor. We never earn interest on it.

Motion to send to full Council by Mr. Neely, Second by Ms. Bline

Mr. Rath - I like your example of the \$30,000 home improvement. I would be the same way. I would give somebody half up front, half upon completion. What I do with that \$15,000 while he's doing the job is none of his business.

Mr. Fox - And the retainage is very common. That's not a new thing. The reduction to 4% is the only new change to that.

Mr. Marmie - I have a comment. To even take it one step further, we are paying interest on that 4% because we get a note and we aren't bonding it yet, we usually get a note, but we have to pay interest.

If it's a three-year project, we still have to pay interest on the money that they have pledged that's there for us. So, we're paying interest on that, we're not getting interest. So, it's even worse than what we think if we gave interest to them, because we're paying interest to the bank or whoever's holding our note, plus we're paying interest to them. So, to take it even one step further, we would be paying them.

Motion passed 4-0

- 2. Ordinance No. 25-36** AN ORDINANCE AMENDING PART TEN, TITLE FOUR, CHAPTER 1048, "WATER" OF THE CODIFIED ORDINANCES OF THE CITY OF NEWARK, OHIO TO INCLUDE SECTION 1048.16 "PROHIBITION OF WATER WELLS"

Mr. Fox - Okay, so another pretty good sized change that we're looking to implement. So, currently, there is nothing to stop a person or a business or an entity or an industry from coming into the City of Newark and drilling a private well to draw water out of the ground and do whatever they wish with it. Currently, that process is permitted by the Licking County Health Department and has been for many years. So, if a person wants to come in and build a house, drill a well, they would have to file a permit with the Licking County Health Department. Licking County Health Department would agree to it. Here's what you're using it for. Here's the volume of water that's coming out of that well and would file that with Ohio Department of Natural Resources, as you would if you lived in the country. The challenge of this is private wells have two things. We are looking to, as you know, water in Licking County is becoming an issue. It's almost like we live in Colorado or Arizona or somewhere arid. But two things that that can cause. One, the quantity of water that Newark uses to provide water for our citizens. It can pull water out that the city would no longer have access to. Secondly, is from a qualitative perspective, every private well has a potential to be a contamination issue for the groundwater that's in the ground. If you think of the ground, the aquifers that are in the ground, they're just big rivers and they're under the surface. There is a risk of contamination that could occur. What we're looking to do is restrict those private wells from being dug and used within the city limits. Basically, any person that wanted water in the City of Newark or any industry or commercial business would buy water from the City of Newark. We have water in pretty much every part of the current corporation of Newark. So, there's really no need that a person could not get public water where they want to construct a house or a business. There would, however, be in the legislation, there is exception to that. We do understand that there are construction activities that happen occasionally for large scale construction where you might need to dig a foot or down 30 feet and there might be groundwater that you need to drill a dewatering well to pour concrete. So, construction activities on a temporary basis for a temporary well would still be permitted. Also, in a commercial or industrial application where a business wants to come in and needs water for a non-potable source. So, they would want to drill a well and use it for a cooling tower or something other than just drinking it and using it as a potable water source. In order to get that exception, that would have to, go ahead, you have a question?

Mr. Rath - How does that eliminate, I mean, there's still a concern of contaminating the aquifer.

Mr. Fox - So in order to get that exception, it would have to pass two-thirds vote of this body. So, anybody that wanted to drill a well would have to have justification, an engineering study done, and say, yes, this makes sense to drill this well because of some undue hardship that tying into the city's water system would cause. I don't think that's very likely, but when we were reviewing other legislation like this throughout the country that other folks, other municipalities had done this same thing. There were some exceptions that were allowed based on hardships, odd situations that you

might want to allow something like this. I can't speak to every situation but that would be very hard to allow in my opinion. And myself, water experts, folks that are way smarter than me that our water engineers and geologists could help justify that. But that would be an exception that they would have to present to Council and Council would pass.

Mr. Rath – How does this effect current wells?

Mr. Fox - Any current well can still stay in service. I just would not allow any new wells to be drilled within the city.

Mr. Rath – Do we have any commercial wells?

Mr. Fox – Yeah, there are a few commercial wells, you know, for industries around the city. Would not expect those to change.

Mr. Marmie – What if their well goes bad or they don't have good water, can they replace it?

Mr. Fox - Yes, we would expect them to either submit a plan for approval to replace it or tie into the city's water system. I talked to the health department, Licking County Health Department, they're fully supportive of this legislation as well. Very similar to septic tanks. If you have a septic tank within the city and there's a public sewer in front of your property, you're allowed to keep that septic tank in operation. If that septic tank fails and you have to replace it, the Health Department will require that customer to connect to our city sewer system. So very similar application as what this would be.

Mr. Rine - So with the current wells, do they get any checks like with this with the county now? Like the ones that are registered now? Does the county come and check on them or anything?

Mr. Fox - Good question but to my knowledge no. I don't want to speak for the county but I don't think so. All current wells are in a database from the Ohio Department of Natural Resources. That's where they're maintained. To my knowledge, the Health Department is not going out checking individual wells.

Mr. Rine - If someone has a complaint, who do they call now?

Mr. Fox - I can't answer that. There're a lot of well companies around that would do that. That's where you start. Now say you have a problem and you call a company to come fix your well, they would have to file that permit with the Health Department. Good question though.

Ms. Bline - Where does this fall within a natural resource? Because rain falls from the sky, falls on your property. Okay, you have it on your property. Where does that fall within property owners rights? Does that water not belong to that person? They have the opportunity to use that water as they wish to drill that well? I mean how far down does that go as the property owner? I would be cautious of infringing on their rights as the property owner.

Mr. Fox - It's a good question and there are none. Not in this area. There are, you know, in Colorado or Lake Erie, the Lake Erie Accord, you can't pull water out of Lake Erie and pump it to Iowa. Colorado River has restrictions like that. In Ohio there are none. So, there is nothing to really stop that from occurring I guess. That's one of our big concerns of why we're trying to implement this as well is looking out for the City of Newark. The City of Newark pulls our water from the Licking River, but we also have a well field north of the of the city that in times of extreme drought or down the road we can supplement the river flow with those wells. If I got a bunch of people drilling water wells and around that area that they're going to drain that aquifer, the City of Newark could potentially limit our capacity of that well field. So, we're also looking at it that from that perspective as well.

Mr. Marmie - You talk about property owner rights, but if you have an acre of land and you drill a well down 75 to 125 feet you are drilling into an underground river or an underground lake of which only a small portion of that water actually is below your property. But you're draining it from all your neighbors as well. So just because you drill down on your property does not mean you're taking water

from directly below your property. It is coming from other sources outside of that as well, and it's for the betterment of all, not for just that one acre in order to get water.

Mr. Fox - Yeah, that's a good point. There is a zone of influence, so from every well that's drawn there's a zone of influence that you're drawing that water table down to that point of withdrawal. It's a good point. I guess from the City's perspective we are looking at it to try to continue to make sure that we have water for the City of Newark residents for the next, you know, 50 years when I'm dead and gone. That's kind of our goal with this.

Mark Mauter, Director of Development - Brandon, there's something called an urban setting designation. Does that apply in this case where you identify an urban area as only being able to use potable water from a public resource?

Mr. Fox - I don't know the answer to that, Mark. We had that come up recently for the Brownfield site, for the Brownfield site that we had. That's an EPA designation, and as part of that, Ohio EPA was very concerned about impacts to contamination in the City of Newark's public water source in any municipality. I guess I can say the issue with that is there's a potential for that in that instance, 21st Street area, right? Yeah, Buckeye and 21st Street. In that example, that was far enough south from our watershed that it didn't directly impact our water source. An issue like that could impact it. I think, speaking in hypotheticals, but yeah, definitely a concern. That's the other reason for this legislation.

Mr. Rath - It certainly sparked more conversation than I thought it would.

Mr. Neely - Mr. Chair, I would just say, I'm going to offer a motion first. Two things are resonating with me. One, potential contamination. They're not in the country, but they're all spread out. We have a lot of concentrated residential housing. We have that many water wells going down, there is a possibility somebody's going to contaminate the water for all. The other one is the scarcity aspect of it, which resonates with me as well. If we have that many wells going down, this is going to jeopardize the water for the rest who are using city water. So those are kind of my two, because it is, I'm with you on property rights. That's something I'm always very weary of and want to guard those, but in this circumstance, with the potential contamination and the scarcity of those aquifers, I'll make a motion.

Ms. Bline - If indeed this were to pass, then it would also behoove us to pass legislation to not sell our water. Because if scarcity is that much of an issue, well then, my goodness, we shouldn't sell it. And as we well know, people from all around us, counties from all around us, businesses from all around us, water is the hottest commodity right now. So, let's not talk out both sides of our mouth and say, you know, you can't have yours, but we're going to sell it. So, let's make sure that we're wise like that.

Mr. Fox - Point taken.

Mr. Neely - I'll just make a quick comment. We can always rescind that if it becomes an issue. We have the potential to help us through some budgetary and finance issues. It's something we can always rescind on a vote.

Motion to send to full Council by Mr. Neely, Second by Ms. Bline

Spencer Barker - Brandon, I wonder, are you able to provide, you said there's some commercial, industrial, customers, residential that are still... Are you able to provide Council with an overview snapshot of that after this meeting, just so we understand where those areas are, that there may be wells in place where areas could be impacted the most of this?

Mr. Fox - Definitely. The ones we know of, you know, and also on ODNR, if anybody wants to see, you can go on Ohio Department of Natural Resources well log. You can see every well drilled in the state of Ohio.

Mr. Barker - I just know between the 5th Ward and 6th Ward, it's 5th Ward City Services, Newark Township of the wells, septic, 6th Ward City Services. So, our area is getting quite choppy.

Mr. Fox - I will say there are very few private wells for residential use in the city of Newark currently. There are several industrial uses. But, yes, I can provide that.

Mr. Barker - Thank you.

Rochelle Volen-Smith, 237 Violet Ct. - I was wondering whether health springs areas, there're a bunch around 30th Street, for instance, would be affected by this, whether that's included as an ...

Mr. Fox – Like an artesian spring? Yeah, we did not include artesian springs in this. This was a well that was going vertical.

Motion passed 4-0

- 3. Ordinance No. 25-37** AN ORDINANCE AUTHORIZING AND DIRECTING THE NEWARK CITY SAFETY DIRECTOR TO CERTIFY TO THE LICKING COUNTY AUDITOR, THE SUM OF \$484,600.00 INCURRED BY THE NEWARK CITY PROPERTY MAINTENANCE DEPARTMENT WITH RESPECT TO PROPERTY MAINTENANCE VIOLATIONS TO BE PLACED AS A LIEN UPON CERTAIN PARCELS OF REAL PROPERTY SITUATED IN THE CITY OF NEWARK, OHIO.

Tim Hickman, Safety Director - Thank you, Mr. Chairman. This is the annual lien document for unpaid property maintenance fines and fees.

Motion to send to full Council by Mr. Neely, Second by Ms. Bline, Motion passed 4-0

Meeting stands adjourned

Jeff Rath -Chair