

BEAVERCREEK CITY COUNCIL  
REGULAR MEETING January 25, 2010 6:00 p.m.

PRESENT: Councilmember Giambrone, Councilmember Howard,  
Councilmember Petrak, Councilmember Vann, Councilmember Wallace, Vice  
Mayor Jarvis, Mayor Hadley

ABSENT: None

Mayor Hadley called the meeting to order followed by roll call.

Vice Mayor Jarvis led the pledge and a moment of silence.

Councilmember Vann MOVED to approve the agenda. Motion was seconded by  
Councilmember Wallace and was PASSED by unanimous voice vote.

Councilmember Howard MOVED to approve the minutes of the January 11, 2010  
meeting with changes. Motion was seconded by Councilmember Giambrone and  
PASSED by majority voice vote. (Vann abstained)

PRESCHEDULED SPEAKER

Making Your Tax Dollars Count – Lisa Hayes State Auditors Office

Lisa Hayes, Regional Liaison for Auditor of State, Mary Taylor's Office, stated  
she was here to present "Making Your Tax Dollar" award to the City of  
Beavercreek for the fiscal year ending in 2008. She stated fewer than 5% of all  
entities receive this award or are eligible. Ms. Hayes explained the eligibility  
requirements that must be met to receive the award, and congratulated Mayor,  
Council members, City Manager, and staff for a great job.

ORDINANCES, RESOLUTIONS, AND PUDS

Ordinance 09-38 Establishment of a new Accounting Fund (Third Reading)

Clerk Gillaugh read an Ordinance to establish a new accounting fund and to  
eliminate certain existing accounting funds in conformity with generally accepted  
accounting principles. This is not an emergency Ordinance and so it will become  
effective thirty (30) days after its passage however it will be effective retroactively  
12:01 a.m. January 1, 2010.

Councilmember Giambrone MOVED to approve Ordinance 09-38, seconded by  
Councilmember Howard. Motion PASSED by unanimous voice vote.

Resolution 10-03 Authorizing the City Manger or the Financial Administrative  
Services Director to request the Auditor of Greene County for advance of real  
estate and public utility taxes

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Clerk Gillaugh read a Resolution authorizing the City Manager or his designee the Financial Administrative Services Director to request advance draws upon amounts collected by Greene County Auditor for City of Beavercreek 2009 real estate and personal property taxes during the calendar year of 2010.

Mr. Kucera stated this is the annual advance request from the City to the County Auditor. He explained the ORC indicates that the County Auditor send us advance draws on property taxes they collect before the usual distribution if this Resolution is passed. Mr. Kucera said there were nine advanced draws last year, and once the City receives those they are immediately invested, and used for operational and capital expenditures.

Vice Mayor Jarvis questioned how soon the City will receive the money. Mr. Kucera explained last year the City received a draw on January 27<sup>th</sup>. He estimated it would be the end of this week or the beginning of next when the City would receive the first draw. Mr. Kucera explained the same process happens in the second half of year around July.

Mayor Hadley asked how many draws it is divided into. Mr. Kucera said there were nine last year, and the City received the regular draws too. He explained that does not include assessments because those are sent in with the regular draws on March 17<sup>th</sup> and August 17<sup>th</sup>, which is when the City received them last year.

Councilmember Vann MOVED to approve Resolution 10-03, seconded by Councilmember Giambrone. Motion PASSED by unanimous voice vote.

Resolution 10-04 Approving Application for funding from State for Grange Hall Bridge

Clerk Gillaugh read a Resolution authorizing the submittal of an application for funding through the ODOT Municipal Bridge Program for the Grange Hall Road Bridge Rehabilitation Project; SFN:2961504.

Mr. Moorman stated the bridge improvement program, which is administered by Ohio Department of Transportation provided Federal funding for repair or/and replacement of certain bridges that are maintained by cities. He explained this program requires a minimum local match of 20% on the construction, and cities are required to fund 100% of the front design costs. Mr. Moorman said after considering the requirements of this program, it is recommended the City submit an application for the rehabilitation of the bridge on Grange Hall Road. He discussed what the project would entail, and explained the total cost of the

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project is \$400,000. Mr. Moorman stated the grant application request is \$280,000 in Federal funding.

Councilmember Howard appreciated the relationship that staff has with ODOT.

Vice Mayor Jarvis MOVED to approve Resolution 10-04, seconded by Councilmember Vann. Motion PASSED by unanimous voice vote.

Resolution 10-05 Approving Application for Earmark funding for U.S. 35 Interchange

Clerk Gillaugh read a Resolution to authorize the submittal of the US 35 Interchanges Project application for Federal Earmark Funding.

Mr. Moorman stated earlier this month he was made aware that Senator George Voinovich and Senator Sherrod Brown offices were accepting applications for new earmark projects. He explained these projects are typically larger in scale, and are important to the regional transportation system. Staff felt the project that best fits the criteria is the US 35 Interchanges Project from Factory Road to Valley Road. He said this project will eliminate the last five at grade intersections between Dayton and West Virginia, and has been under environmental review from ODOT for numerous years. Mr. Moorman stated there is sufficient money to complete the environmental review and begin detail design, but a lack of funding to complete detail design and purchase the land needed to build the improvement. He said it is recommended the earmark request be submitted for the gap in funding between finishing the design and purchasing the right-of-way for the project. Mr. Moorman explained these steps have to be completed before serious consideration for funding by ODOT.

Councilmember Wallace questioned if TEPPCO and the pipeline going across US 35 and Factory Road have been addressed in this project. Mr. Moorman said they would identify all utilities within the project area, and that would be one they would identify and address. Mr. Beach stated it is identified on the preliminary drawings.

Councilmember Giambrone felt this was a good opportunity for the City to submit a project to the US Senators, as well as the Congressional Delegation. She thought it was important to let the public know that appropriations do not add dollars to the federal budget, and these are already dollars that have been budgeted. Councilmember Giambrone said Council is actually helping these leaders target dollars that have already been approved in the Federal budget. She stated other cities have used this quite effectively, and the City of

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Beavercreek has not used as much direct appropriations, and thought it was terrific to make it known.

Councilmember Wallace MOVED to approve Resolution 10-05, seconded by Councilmember Giambrone. Motion PASSED by unanimous voice vote.

Resolution 10-06 Approving Application for MVRPC Funds for the Federal Jobs for Main Street Act

Clerk Gillaugh read a Resolution approving the submission to Miami Valley Regional Planning Commission of an application for funds available through the Federal Jobs for Main Street Act.

Mr. Moorman stated after the last Council meeting, MVRPC announced they were receiving applications for funding under the Federal Jobs for Main Street Act. He explained the Jobs for Main Street Act is pending litigation at Congress, which is Stimulus Phase II. Mr. Moorman said they assembled a list of five projects, and staff was not able to come before City Council before submittal because the deadline was last Friday. He explained the priority of the five projects, and it is possible to change the priority if Council chooses. Mr. Moorman discussed the five projects, what the project entails, and the cost of the project.

Councilmember Giambrone asked if these projects take into account the City's desire to be more pedestrian friendly. Mr. Moorman stated yes, and staff received a list of projects from the Bicycle Advisory Committee.

Councilmember Vann questioned if the Grange Hall Road Resurfacing Project was going to improve the width or bicycle accessibility. Mr. Moorman explained it will be a resurfacing project only.

Councilmember Petrak thought it was good that MVRPC got these in their books because the Stimulus II is questionable at this point.

Councilmember Howard said the City did their own ranking, and questioned if MVRPC will do their own ranking also. Mr. Moorman stated they have their own scoring system. There was a discussion about the projects the City submitted for the Stimulus I package, and which projects MVRPC collected.

Vice Mayor Jarvis asked if what Council selects tonight will be the City's priority. Mr. Moorman said yes, the Resolution will be modified, and MVRPC has been notified there may be changes as far as the priorities.

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Councilmember Giambrone MOVED to approve Resolution 10-06, seconded by Councilmember Howard. Motion PASSED by unanimous voice vote.

Ordinance 10-01 Amending Section 95-21 Concealed Carry License  
Clerk Gillaugh read an Ordinance amending Ordinance Section 95.21 to permit individuals with concealed carry licenses to carry handguns in public parks located within the City of Beavercreek, Ohio.

Mr. McHugh explained due to Ohio legislature's adoption of Section 2923.126, the Supreme Court of Ohio determined this is a law of general interest under Article 18 of the Ohio Constitution. He stated that anything of general interest takes precedence over the City's ability to regulate. Mr. McHugh said the legislation is an attempt to comply with what is required in the statute.

Mayor Hadley said the City must comply with state law, so this must be approved. Mr. McHugh stated that was correct.

Councilmember Petrak explained when he read this several months ago, he was sure he was reading something wrong. He reviewed the Ohio Revised Code, and wanted to believe he was wrong that they were allowing people to have concealed carry into parks. Councilmember Petrak stated he is still opposed to it, but Council does not have a choice. He questioned if they were allowed to ban concealed carries from libraries. Mr. McHugh said there is a specific group of buildings or entities that do not allow concealed carries, and he believed libraries were one of them.

Councilmember Howard said she agreed with the right to bear arms, but her children play in a park. She thought it is ridiculous that they would allow firearms in a park. Councilmember Howard was not pleased because she did not have a choice in this matter, and since it was ruled by the Ohio Supreme Court the City has to adhere to it.

Mayor Hadley questioned if it had been challenged, and the Supreme Court did rule in favor of this law, so the City doesn't have a say in the matter.

Vice Mayor Jarvis referred to Paragraph B, and said in Paragraph C it adds "snares and traps" and asked if those should be added in Paragraph B. Mr. McHugh said he would amend it and add "snares and traps" to Paragraph B.

Councilmember Giambrone said she read Paragraph C to read they may be brought into a park but may be confiscated. Mr. McHugh explained the intent of Paragraph B prohibits them, and Paragraph C says they will be taken away.

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Councilmember Giambone thought Paragraph C should then say if they are brought into the park they will be confiscated. Mr. McHugh stated in Paragraph C the word "may" should be changed to "shall".

Mr. McHugh explained in the statute there are some fairly severe penalties for those with licenses that may inappropriately use their weapons. Councilmember Giambone said she has heard police officers say they don't worry about the people who go through the trouble of getting a concealed carry license as those that bring in those items unregulated.

Councilmember Howard said that many parks are close to schools, and felt it was an accident waiting to happen.

Vice Mayor Jarvis stated the date on the Ordinance needed to be changed from 2009 to 2010.

Councilmember Vann MOVED to approve Ordinance 10-01 with revisions and send it to second and third reading, seconded by Vice Mayor Jarvis. Motion was PASSED by majority voice vote. (Howard opposed)

#### LIQUOR LICENSES

3321 BBQ LLC/DBA Woody's Bar B Q – NEW

Ohio Division of Liquor Control sent police notification of a request for a records check on an applicant applying for a new liquor permit. The applicant Sharon C. York is applying for a D1 and D2 liquor permit for 3321 BBQ LLC, DBA Woody's Bar-B-Q located at 3321 Dayton-Xenia Road, Beavercreek, OH 45432. A records check on the applicant revealed no criminal record with this agency or in the State of Ohio.

Mr. McHugh explained Council considered an economic development transfer application, which was a Resolution in order for the restaurant to apply for the transfer of a license from northeast Ohio. He stated several months ago, when they were working on the transfer, the applicant also applied for a D-5 license. At the time they applied, none were available. Since that time the Ohio Department of Liquor Control has gone through and looked at the growth statistics supplied to Ohio Department of Development by Planning staff for the City of Beavercreek, and has made a determination in the D-5 category to increase the allowed permits from 20 to 23. Mr. McHugh explained what Council received is what is typically given out for a new application.

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Mayor Hadley questioned if this will negate the Resolution they previously approved. Mr. McHugh stated that was correct because in the interim the State increased the number of permits allowed.

Councilmember Petrak MOVED to accept without comment, seconded by Councilmember Giambrone. Motion was PASSED by unanimous voice vote.

Manns & Caswell Inc/DBA Submarine House – NEW

Ohio Division of Liquor Control sent police notifications of a request for a records check on two applicants applying for a new liquor permit. The applicants Christopher and Tisha Caswell are applying for a D5 liquor permit for Manns & Caswell Inc., DBA Submarine House, located at 3195 Dayton-Xenia Road, Beaver creek, OH 45434. A records check on the applicants revealed no criminal record with this agency or in the State of Ohio.

Mayor Hadley said the City had 20 permits they just approved 21, and questioned if this would bring the City to having 22 permits.

Mr. McGrath stated that Woody's would come back through the same process as the Submarine House. Staff worked with Submarine House and Kimco Development since this is a potential location of the Submarine House in the Kroger redevelopment project. He explained the liquor permits that are available, that are held by private entities, are too expensive to buy off the market. Mr. McGrath said since they were close to the 2010 Census, they looked at a study about the amount of people living in the City of Beaver creek. A packet was compiled, and sent to the representative for the Ohio Department of Development. The department reviewed the packet, and came back with an estimate of 44,851 people, which increased the permits by three. Mr. McGrath explained in reviewing the applications through the State, Submarine House had submitted an application under the normal process as opposed to the economic development transfer process that Woody's had gone through. Based on the availability of additional liquor permits, it is anticipated Woody's will be back for consideration of a D-5 liquor permit as opposed o the transfer from Northeast Ohio.

Mr. McGrath said the permit for Submarine House will be the 21<sup>st</sup> permit, and when Woody's submits their application, they will be 22.

Councilmember Vann MOVED to accept without comment, seconded by Councilmember Giambrone. Motion was PASSED by unanimous voice vote.

CITY MANAGER'S REPORT

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Mr. Cornell discussed the 2010 Census, and its importance. He explained during the February/March time frame, the Census Bureau will be mailing out the initial questionnaires. Mr. Cornell stated the U.S. Constitution requires a national census every decade, and it ultimately helps draft the number of seats related to legislature and helps determine boundaries for state and local legislative and congressional districts. Mr. Cornell explained another important part is that it helps determine locations for retail stores, schools, hospitals, new housing developments, and other community facilities. He stated they will have a link on the City's website soon for citizens who are interested in receiving more information.

Mr. McGrath explained Spencer Hall, Zoning Administrator, has worked closely and intensely on the 2010 Census Initiative. He stated Mr. Hall found a significant number of developments that were not accounted for on the maps and GIS data that was provided by the Census Bureau. Mr. McGrath said Mr. Hall anticipates about an additional 2,000 units, being single-family or multi-family units. He explained each type of housing unit has a government formula assigned to it as the average number of people in each type of unit.

Mr. McGrath stated another process, separate from the Census process, is the Department of Liquor Control through the Ohio Department of Development in terms of estimates of population. Mr. McGrath said with the growth, it makes the community more attractive, and these numbers will only reiterate the direction the City has been going over the past several years.

Mr. Cornell showed a slide that showed the permit activity for 2009 through the Planning Department. He stated in total there were over 800 permits issued.

Mr. Cornell thanked the Beavercreek Rotary Club. He also thanked Mayor Hadley and Vice Mayor Jarvis for their participation during the State of the City Address last Friday, January 22<sup>nd</sup>.

Councilmember Giambrone requested if he would be delivering more of those, he let Council know because she thought a lot of them would welcome the opportunity to attend.

#### MAYOR'S REPORT

Mayor Hadley stated after hearing the information reported by the City Manager, Beavercreek is the right place to live, the right place to work, and the right place to play. He felt that Beavercreek is one of the most outstanding locations in this region.

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Mayor Hadley questioned if they will take one of the liquor permits away if the population does not reach 44,851 people. Mr. McGrath said once the permit is issued, it would be a difficult process to retrieve it back. Mr. McHugh explained is someone turned in their permit or gave their permit up; it would become a permit that would not be reissued.

Mayor Hadley said he thought Council agreed with Councilmember Howard's disapproval of the Concealed Carry Weapon Ordinance. He stated he did not like it, but they are obligated to approve it.

Mayor Hadley requested everyone in the community keep in mind the younger generation in the community who are the future of the City and Country. He explained last week, a very athletic star of the football team was involved in an accident. Mayor Hadley said there have been no circumstances given as to why the accident happened.

#### COUNCIL TIME

Councilmember Giambrone said she received a phone call from the gentleman who owns the taxi cab company in Xenia, who is planning on bringing taxi cabs to Beavercreek. She explained he wanted to let Council know the City does not have any rules pertaining to taxi cab companies.

Councilmember Giambrone stated last week several federal officials have asked communities and states to look at ordinances and laws banning texting and cell phones while driving. She said if the State of Ohio is not willing to take the leadership role, she would request Council take a look at that.

Councilmember Giambrone felt the award from State is a testament to the budget process. She said the process of the budget is incredibly thorough, but incredibly transparent.

Councilmember Vann said a citizen several months ago, called Council's attention to when the City first became a City in 1980, someone decided to pass an Ordinance that a person could not make u-turns within Beavercreek. She explained a person coming into the City will not know are law is different than State law. The State law allows u-turns unless it is posted. Councilmember Vann stated the Fire Chief was able to get Council a copy of City Ordinance versus the Ohio Revised Code, and she urged that it would be corrected in the City's Ordinance.

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Vice Mayor Jarvis and Councilmember Vann discussed Paragraph C of the Ordinance. Mr. McHugh said he would provide some further clarification regarding this matter.

Councilmember Wallace had several comments for Veterans in Beavercreek and in Greene County. She explained she sits on the Veterans Advisory Board for the VA as a disabled veteran. Councilmember Wallace said they are encouraging the veterans who are coming off OEF and OIF programs to go to the Transition Center at Wright Patt Air Force Base or the Freedom Center at the VA to register, so they can obtain their benefits.

Councilmember Wallace said the Volunteers of America have taken on a building at the VA Center, and have set it up for the homeless. She explained there has been a specific building in Montgomery County that has been established for the homeless for those living in Montgomery and Greene County.

Vice Mayor Jarvis agreed with Mayor Hadley about Beavercreek being a great place to live, work, pray, and play.

Vice Mayor Jarvis said the Census Bureau is still looking for people to work, which would be a great opportunity to make some part time money.

Councilmember Petrak agrees with the Right to Bear Arms, but does not believe we should have Concealed Carry in Parks.

Councilmember Petrak said at the last council meeting, he talked about the County going into conjunction with Greene CATS to build a facility. Since that meeting he had gotten some feedback from the County, and they are getting a lot of heat from the handicap accessible people about the building, particularly the Board of Elections building.

Councilmember Petrak stated everyone received their tax bills, and he had received some input from residents. He found it interesting that one tax issue often discussed is the elderly on a fixed income who are getting pushed out of Beavercreek by the increasing property tax burden. Councilmember Petrak said one lady he was talking to, explained to him that two of her neighbors had to give up their houses because of the property tax increases. She questioned him if there was a way to reduce a portion of the taxes, which he did not feel could be done because state law defines who must pay property taxes. Councilmember Petrak stated he decided to look at the increase in tax burden they approved over the last year, and compare his 2008 to his 2009 taxes. He discussed the increases and decreases, and said the largest jump in his taxes is the Fire

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Department. This amounted to a 30% increase for the Fire Department. Councilmember Petrak explained it is the Township Fire Department, and not the City.

Councilmember Howard stated the City recently had a gun incident over the weekend, and she is not for guns in parks.

Councilmember Howard wanted to remind everyone that the City still has openings on the Boards, Committees, and Commissions, and will be accepting applications through February 1<sup>st</sup>. She explained if anyone would like more information they could go to the City's website.

Councilmember Howard said they recently hosted Lieutenant General Deptula in the City of Beavercreek today at Advanced Technical Information Center, and he is the director of ISR, which is Intelligence, Surveillance, and Reconnaissance for the Air Force. She explained he spoke about remotely piloted aircraft, there role in the war, and domestic safety.

Mrs. Howard congratulated the employees with anniversaries in January and thanked them for their services; Emilio Balaguer 1 year, Zach Hughes 1 year, Clayton Campbell 1 year, Kevin Vance 1 year, Michael Cornell 3 years, Andrew Amburn 6 years, Michael Gafkjen 6 years, Leslie Heller 6 years, Judith Lemke 6 years, Lee Duteil 8 years, Karen Hamilton 11 years, Mark White 11 years, Jeffrey Moorman 13 years, Donald Cole 15 years, Jeffry Fiorita 18 years, Shawn Sumner 18 years.

Councilmember Howard said there will be some upcoming graduations with the Dare Program, and requested if Mr. Cornell could get in contact with Officer Cole to see if some of those students would like to speak to Council.

#### UNSCHEDULED SPEAKERS

Scott Edwards wanted to introduce Beavercreek Taxi. He explained he owns Purple Cabs in Xenia, Ohio, and has been in business for three years. Mr. Edwards felt there was a need for them in Beavercreek, and was unaware if there was a cab company in Beavercreek. He stated cities typically have rules for taxi cabs, but he did not believe Beavercreek had any. Mr. Edwards suggested Council look into rules and regulations for taxi cabs. He passed out a copy of Xenia's regulations and a business card to the Council members.

#### EXECUTIVE SESSION

Councilmember Petrak MOVED to enter into Executive Session at 7:08 p.m. pursuant to Section 121.22 of the Ohio Revised Code, for the purpose of

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consideration of preparing for, conducting or reviewing negotiations or bargaining sessions with public employees, seconded by Councilmember Howard. Motion was PASSED by a roll call vote of 7-0.

Councilmember Petrak MOVED to adjourn Executive Session, seconded by Councilmember Giambrone. Motion was PASSED by a roll call vote of 7-0.

Councilmember Vann MOVED to reconvene the regular meeting, seconded by Councilmember Wallace. Motion was PASSED by unanimous voice vote.

Councilmember Vann MOVED that Council accept the recommendation of the City Manager and Police Chief and that the City accept the proposal of the Police Sergeants Unit and Dispatchers Unit and further that the City Manger and Police Chief be authorized to prepare contracts and resolutions for Council's formal consideration, seconded by Councilmember Giambrone. Motion was PASSED by a roll call vote of 7-0.

Councilmember Giambrone MOVED to adjourn the meeting at 7:26 p.m. seconded by Councilmember Petrak. Motion was PASSED by unanimous voice vote.

\_\_\_\_\_  
Mayor Hadley

ATTEST:

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Deputy Clerk  
cmin012510