

BEAVERCREEK CITY COUNCIL
REGULAR MEETING February 22, 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.

Councilmember Howard led the pledge and a moment of silence.

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

Councilmember Howard MOVED to approve the minutes of the February 1, 2010
Work Session meeting with changes. Motion was seconded by Councilmember
Wallace and PASSED by unanimous voice vote.

Councilmember Giambrone MOVED to approve the minutes of the February 8,
2010 Regular meeting with changes. Motion was seconded by Vice Mayor Jarvis
and PASSED by unanimous voice vote.

PRESCHEDULED SPEAKERS

Michael Ondrasek- Petition Submission

Mr. Ondrasek presented a petition requesting that Council hold a public hearing
to allow citizens to express their personal opinions about connecting
Morningview Drive with Nightingale Way.

Walt Lichtenberg- History

Mr. Lichtenberg stated he wanted to discuss the history regarding closing of
Morningview Drive. Beaver Creek Acres was developed in the early 1950's and
Fairlea Estates to the north was developed in the 1960's. Cox Brothers
subdivision was approved in August 1979, and included the first 27 lots. Mr.
Lichtenberg explained as part of that subdivision there was a road that allowed
people to get out of the plat, and it was plotted as Lot 19 of Beaver Creek Acres
subdivision. He explained there was a law suit filed in 1980 to block Lot 19 before
Section Two was platted. Mr. Lichtenberg explained the lawsuit resulted in
closing the road, and a bike path being constructed on Lot 19 in 1985. The
original design of the bike path was a breakaway pole, so it could serve as an
emergency access. He explained the Fire Department turned the design down,
and it is not an emergency exit. In 1991, King James was constructed, and
people were able to cut through the neighborhood.

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He discussed a traffic count in 1993, and stated a public hearing was held in November 1993 to discuss opening Morningview Drive. As a result of that hearing the City was not sure about building a road across Lot 19, and the City went to court to find out their rights on the land. He explained the outcome of the court was the City can construct a road across the land after holding a public hearing, which is the reason for the petition. Mr. Lichtenberg stated a traffic count study was done after the light was constructed at North Fairfield Road and Claydor Drive. He discussed some concerns this created for residences living on Morningview Drive. He thought the change would minimize the impact of Beaver Creek Acres if Nightingale Way was connected to Morningview Drive, and thought the expense would be minimal. Mr. Lichtenberg requested Council consider the petition request because he felt it was the right thing to do.

ORDINANCES, RESOLUTIONS, AND PUDS

Ordinance 10-01 Amending Section 95-21 Concealed Carry License (Third Reading)

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.

Vice Mayor Jarvis referred to Paragraph C, and wanted to make sure the wordage was correct. Mr. McHugh stated it was correctly written. Councilmember Giambrone asked if this wordage was consistent with Ohio Law. Discussion followed regarding this matter, and it was determined the word "firearms" should be changed to "hand guns".

Councilmember Vann questioned if a person brings a carving knife to a picnic would it be confiscated. Mr. McHugh said in theory yes, but mostly likely a prior event would have to take place for a police officer to be called to the scene. Councilmember Giambrone was concerned with passing an Ordinance that Police are not always going to enforce.

Councilmember Petrak stated when Council passed the curfew law, citizens in Beavercreek thought every teenager was going to be arrested. He explained it is used as a discretionary purpose by Police, and they are here to serve and protect. Councilmember Petrak stated there have been very few complaints about police officer's being overly aggressive.

Councilmember Giambrone stated she was comfortable with the Ordinance as long as citizens understand the intention.

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Councilmember Howard stated she understood Councilmember Vann's concern, but thought the environment and the intent of the knife would help the police officer make the right decision if he/she should react or not to the situation. She said Council gives Police the tool to enforce it when they need to, but the Police are very good at using their best judgment and applying it when the need arises and the environment calls for it.

Mayor agreed with Councilmember Howard, and stated the City has to be in compliance with Ohio Law.

Councilmember Vann stated the knife wordage is a local issue, and is not Ohio Law. She felt there should be some language added about the knife regulation. Mr. McHugh said language could not be added regarding knives, and stated if Council does not want to regulate knives then it should be removed from the Ordinance.

Mayor Hadley recommended leaving the wordage in the Ordinance, and it would be up to the discretion of the police officers if they need to enforce it or not. He stated if it is abused or it creates issues, it can be removed at a later time.

Councilmember Vann did not like the idea of passing an Ordinance that would only be sometimes enforced. Mr. McHugh read what the current rule is in Beavercreek, and Councilmember Vann liked that it stated any knife may be confiscated.

Councilmember Giambrone thought the word "may" and "shall" is the big difference. Mayor Hadley questioned if they could change the word without going back to the first reading. Mr. McHugh stated that is a substantial change, and it would need to go back to the first reading.

Councilmember Petrak was concerned if it is changed to "may", then someone that should have had their knife removed will get into a legal argument with this whole issue.

Councilmember Vann questioned if the City has ever had a situation with a knife. Chief Turner stated as police officers they look at what lawful purpose it serves, and said the police officers will use their discretion. He understood the "may" and "shall", and did not see any issues if the situation is left up to the police officer.

Mr. McHugh stated Council has addressed a number of concerns on the third reading, and it needs to go back to the first reading. Councilmember Giambrone

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questioned if there was a time frame with the Ohio Revised Code. Mr. McHugh stated no.

Councilmember Vann MOVED to approve Ordinance 10-01, seconded by Councilmember Howard. Motion was DENIED by majority voice vote. (Petrak)

Ordinance 10-02 Supplemental Appropriations Ordinance for Fiscal Year January 1, 2010 through December 31, 2010

Clerk Gillaugh read an Ordinance to make supplemental appropriations for the fiscal year beginning January 1, 2010, and ending December 31, 2010, and to amend Ordinance 09-40.

Mr. Beach stated at the beginning of every year, the City takes on a supplemental appropriation action to take care of various housekeeping items between the times where the City is putting together the budget in September/October/November to the current time. He explained certain things occur within the construction projects, and there are numerous reasons why there are a number of items on the supplemental appropriation. Mr. Beach reviewed the funds and the reason why they were needed.

Mayor Hadley questioned where the additional money comes from. Mr. Beach explained in the case with the carry over items, those are already funds set aside in 2009 and are not accounted for in the budget process, and are just carried over. He said in the case with the other items, the City has balances that are either not appropriated yet or are unexpended balances and with the current means will still be able to appropriate funds from those balances. Mayor Hadley stated the City has the funds to do this, and it is basically sitting in another fund or has not been expended from a fund from last year. Mr. Beach stated that was correct. Mayor Hadley questioned if the Dayton-Xenia Road project was included in the not expended funds. Mr. Beach explained that is a carry over item because it is an ongoing project.

Councilmember Petrak asked if this still retains a 15% balance in the overall budget. Mr. Beach stated in the operational funds, the City has maintained the 15% balance. Councilmember Petrak stated with the adjustments to the contracts with the Communication Workers of America, the Fraternal Order of Police, Sergeants and Civilian personnel along with the general employees it is about \$110,000. Mr. Beach said with all the operating funds together on those issues it is closer to \$130,000. Mayor Hadley questioned if the 15% was maintained in those funds. Mr. Beach stated that was correct.

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Vice Mayor Jarvis questioned what was being requested for the Golf Course Fund 572. Mr. Kucera stated it includes the additional increases for wages and benefits, and because that is a zero based fund additional money has to come from the general fund to support those, but the City has to show the expenditures related to particular adjustments for the year.

Councilmember Petrak stated by keeping the 15% balance it gives the City a nice bond rating, and he commended staff for keeping it.

Councilmember Giambrone MOVED to approve Ordinance 10-02, seconded by Councilmember Petrak. Motion PASSED by a roll call of 7-0.

Resolution 10-12 ODNR Grant for Fishing Derby

Clerk Gillaugh read a Resolution authorizing the submittal of applications for funding through the Ohio Department of Natural Resources to apply for the Step Outside Grant.

Mrs. Farrell stated she is requesting permission to allow for a \$500 grant through the Ohio Department of Natural Resources, which would help pay for fish for the second annual Fishing Derby. She explained last year was the first year, and they applied for the grant and was successful in receiving it. Mrs. Farrell explained this is a 100% grant, and there are no matching funds.

Mayor Hadley questioned if the cap for the grant is \$500. Mrs. Farrell stated that was correct. Mayor Hadley said the grant would be used to purchase fish, and Mrs. Farrell stated that was correct.

Councilmember Petrak asked what kind of fish would be purchased. Mrs. Farrell stated they are going to purchase catfish since they are easier to catch.

Mayor Hadley questioned if it is a catch and release, and Mrs. Farrell confirmed that was correct. Mrs. Farrell stated the fish will be caught, measured, and released. She explained prizes will be given for the largest catfish, smallest catfish, and the most catfish caught.

Councilmember Vann asked what kind of fish they used last year. Mrs. Farrell stated they used a combination of blue gill, trout, and bass. She explained most kids caught the little blue gill, and the catfish makes it a little more challenging. Councilmember Vann questioned if fishing is allowed after the derby. Mrs. Farrell stated they can fish after the derby, and all City owned ponds are catch and release.

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Councilmember Vann asked how many years can \$500 worth of fish be put into the pond before it is overpopulated. Mrs. Farrell stated she was unable to answer that question, but they will be working with fish companies that can tell them the right population. There was a discussion about how the fish companies can tell the amount of fish in a pond.

Councilmember Giambrone MOVED to approve Resolution 10-12, seconded by Councilmember Wallace. Motion PASSED by unanimous voice vote.

DECISION ITEMS

Boards and Commissions

Planning Commission (2 Vacancies)

Councilmember Wallace nominated Michael Self. Councilmember Giambrone nominated Adolfo Tornichio. Councilmember Petrak nominated Tony Corvo. Councilmember Howard nominated Michael Hopkins. Councilmember Vann nominated Randall Groesbeck.

Councilmember Vann MOVED to close nominations, seconded by Councilmember Petrak. Motion PASSED by unanimous voice vote.

Vote by show of hands was Tony Corvo 1, Randall Groesbeck 1, Michael Hopkins 0, Michael Self 7, Adolfo Tornichio 5.

Councilmember Giambrone MOVED to appoint Michael Self and Adolfo Tornichio to the Planning Commission for the term March 1, 2010 through February 28, 2013, seconded by Councilmember Howard. Motion PASSED by unanimous voice vote.

Planning Commission (1 Replacement)

Councilmember Wallace nominated Randall Groesbeck. Vice Mayor Jarvis nominated David Kastner. Councilmember Howard nominated Michael Hopkins. Councilmember Petrak nominated Bob Wortham.

Councilmember Giambrone MOVED to close nominations, seconded by Councilmember Howard. Motion PASSED by unanimous voice vote.

Vote by show of hands was Randall Groesbeck 3, Michael Hopkins 2, David Kastner 1, Bob Wortham 1. A second vote by show of hands was Randall Groesbeck 4, Michael Hopkins 3.

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Councilmember Wallace MOVED to appoint Randall Groesbeck to the Planning Commission for the term March 1, 2010 through February 28, 2011, seconded by Vice Mayor Jarvis. Motion PASSED by unanimous voice vote.

Board of Zoning Appeals (2 Vacancies)

Councilmember Giambrone nominated Michael Hopkins. Councilmember Petrak nominated Chad Whilding. Councilmember Howard nominated David Kastner. Vice Mayor Jarvis nominated Jason Scott. Councilmember Vann nominated Amelia Lombardo.

Councilmember Giambrone MOVED to close nominations, seconded by Councilmember Howard. Motion PASSED by unanimous voice vote.

Vote by show of hands was Michael Hopkins 6, David Kastner 1, Amelia Lombardo 4, Jason Scott 1, Chad Whilding 2.

Councilmember Giambrone MOVED to appoint Michael Hopkins and Amelia Lombardo to the Board of Zoning Appeals for the term March 1, 2010 through February 28, 2013, seconded by Vice Mayor Jarvis. Motion PASSED by unanimous voice vote.

Board of Zoning Appeals (1 Replacement)

Councilmember Howard nominated David Kastner. Councilmember Petrak nominated Chad Whilding. Vice Mayor Jarvis nominated Jason Scott.

Councilmember Giambrone MOVED to close nominations, seconded by Councilmember Howard. Motion PASSED by unanimous voice vote.

Vote by show of hands was David Kastner 3, Jason Scott 2, Chad Whilding 2. A second vote by show of hands was David Kastner 6, Jason Scott 1.

Councilmember Giambrone MOVED to appoint David Kastner to the Board of Zoning Appeals for the term March 1, 2010 through February 28, 2011, seconded by Councilmember Howard. Motion PASSED by unanimous voice vote.

Parks, Recreation, and Culture Board (1 Vacancy)

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Councilmember Giambrone nominated Carrie Hurley. Councilmember Wallace nominated Cynthia J. (C.J) Bieghler.

Councilmember Petrak MOVED to close nominations, seconded by Councilmember Howard. Motion PASSED by unanimous voice vote.

Vote by show of hands was Cynthia J. (C.J.) Bieghler 2, Carrie Hurley 5.

Vice Mayor Jarvis MOVED to appoint Carrie Hurley to the Parks, Recreation, and Culture Board for the term March 1, 2010 through February 28, 2013, seconded by Councilmember Giambrone. Motion PASSED by unanimous voice vote.

Bikeway Advisory Committee (2 Vacancies)

Councilmember Petrak nominated Abe Bassett. Councilmember Howard nominated Ralph Speelman III. Vice Mayor Jarvis nominated Jerome Walling.

Councilmember Giambrone MOVED to close nominations, seconded by Councilmember Petrak. Motion PASSED by unanimous voice vote.

Vote by show of hands was Abe Bassett 2, Ralph Speelman III 7, Jerome Walling 5.

Councilmember Wallace MOVED to appoint Ralph Speelman and Jerome Walling to the Bikeway Advisory Committee for the term March 1, 2010 through February 28, 2013, seconded by Vice Mayor Jarvis. Motion PASSED by unanimous voice vote.

Environmental Advisory Committee (3 Vacancies)

Councilmember Giambrone nominated Jason Williams. Councilmember Wallace nominated Rick Haverland. Councilmember Petrak nominated Nick Scambilis. Vice Mayor Jarvis nominated Gordon Walker.

Councilmember Giambrone MOVED to close nominations, seconded by Councilmember Howard. Motion PASSED by unanimous voice vote.

Vote by show of hands was Rick Haverland 4, Nick Scambilis 7, Gordon Walker 3, Jason Williams 7.

Councilmember Giambrone MOVED to appoint Rick Haverland, Nick Scambilis, and Jason Williams to the Environmental Advisory Committee for the term March

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1, 2010 through February 28, 2013, seconded by Councilmember Howard. Motion PASSED by unanimous voice vote.

Personnel Board (1 Vacancy)

Councilmember Giambrone nominated Ronald Hunt. Councilmember Vann nominated Mark Insani.

Councilmember Petrak MOVED to close nominations, seconded by Councilmember Howard. Motion PASSED by unanimous voice vote.

Vote by show of hands was Ronald Hunt 6, Mark Insani 1.

Councilmember Giambrone MOVED to appoint Ronald Hunt to the Personnel Board for the term March 1, 2010 through February 28, 2013, seconded by Vice Mayor Jarvis. Motion PASSED by unanimous voice vote.

Impact Fee Appeals Board (2 Vacancies)

Councilmember Vann nominated Mark Insani.

Councilmember Vann MOVED to close nominations, seconded by Councilmember Howard. Motion PASSED by unanimous voice vote.

Vote by show of hands was Mark Insani 7.

Councilmember Giambrone MOVED to appoint Mark Insani to the Impact Fee Appeals Board for the term March 1, 2010 through February 28, 2013, seconded by Councilmember Howard. Motion PASSED by unanimous voice vote.

Council discussed the great turn out of applications, and thanked everyone who was interested in being appointed to help serve the community. There was discussion about keeping these applications on file throughout the year in case any vacancies occur.

CITY MANAGER'S REPORT

Mr. Cornell discussed the statistics from the three snow events that occurred between February 5, 2010 and February 15, 2010. He explained Mr. Brown and his crew did an outstanding job on these three snow events.

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Vice Mayor Jarvis asked for an explanation regarding the double time- overtime given in Storm #10. Mr. Brown explained that was President's Day, and since it was a holiday, the crew was paid double time- overtime.

Mayor Hadley said the crew did a great job with all three substantial snow storms, and thanked them for their hard work.

Councilmember Howard thanked the crew for all their hard work and efforts, and appreciated all the attention they pay to the weather so they can be diligent with tax payer dollars.

Mr. Brown stated in the event of a major snow storm with any depth to it, if people could try to stack as much snow as possible on the right hand side of their driveways. He explained that is because when a snow plow cleans the street, it does not plow the shoveled snow back into the driveway. He explained mailboxes are another issue, and it is very difficult with the snow coming off the plow and the snow plow blade itself.

Councilmember Vann asked if they have to replace many mailboxes. Mr. Brown explained they are currently working on it.

Mr. Cornell requested Mr. Brown discuss sidewalks in a snow event. Mr. Brown stated the City has an Ordinance that requires citizens to clean sidewalks. He explained the City also likes to push the snow back as far as they can in case they get another substantial snow event.

Councilmember Giambrone reminded people to clear the snow around fire hydrants.

Councilmember Vann thanked the City for doing the Dayton-Xenia Road bikeway along Dayton-Xenia Road.

Mr. Cornell said Mr. McGrath had updates regarding several developments in Beavercreek. He stated the first one is the Kroger Marketplace, and the demolition of the two vacant restaurants is scheduled to begin soon. The zoning permit should be released in early March, the Marketplace should be completed by end of 2010, and gas station should be constructed and completed shortly thereafter.

Mr. McGrath stated the Beavercreek right-of-way that connects to Meadow Bridge Drive between Papa John's and McDonald's will be temporarily closed at the end of the right-of-way. He showed a site plan and discussed what will occur

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during Stage 1, Stage 2, Stage 3, and Stage 4. He reviewed the location of the construction fence, and stated the developer has a particular plan created for developing the site and their phasing plans will be located in the construction trailer so the workers understand what is to be effected and not on the site. Mr. McGrath explained there will be some inconvenience at the site from now until the end of the year, but staff anticipates some activity occurring within the next week or two.

Councilmember Vann stated she was excited it was going to be done in nine months. Mr. McGrath said Kroger's goal is to have the Marketplace open by the end of 2010, but there will still be some activity on the site with the demolition of the old Kroger. Councilmember Vann questioned when the roadway would be connected to Beaver Vu Drive. Mr. McGrath explained that will be constructed once the old Kroger store is demolished, and estimated it to be the early part of 2011.

Mr. Cornell explained other development updates regarding the Mills-Morgan Medical Campus. He stated the zoning permit should be released by the end of February, the foundation work is currently underway, and the structure should begin to become visible in the next several months.

Mr. McGrath stated the Planning and Engineering Departments have wrapped up the review of the site construction plans, and anticipate in the next several weeks there will be evidence of the building going vertical. He said staff expects to receive all the documentation this week so the zoning permit can be released by the end of this week.

Mr. McGrath explained there will be some increased activity on North Fairfield Road shortly because staff received word that Frisch's Big Boy has submitted their permit as well. He stated their goal is to be open by the end of August.

Councilmember Giambrone questioned if that meant they had decided to build the temporary traffic light. Mr. McGrath stated that was correct.

MAYOR'S REPORT

Mayor Hadley wished his daughter-in-law, Cathy, a very Happy Birthday.

COUNCIL TIME

Councilmember Giambrone explained she had read an article in the newspaper that Beavercreek was looking at taking advantage of lower interest rates on municipal bonds to refinance their golf course debt. She explained she received several phone calls, and asked if Mr. Cornell could elaborate on the subject. Mr.

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Cornell said Finance staff is doing a good job of looking where the interest rates are in the marketplace and from a financial side of things the interest rates are going to be on the way back up in the near future. He stated the Finance staff looks regularly and often at the rates and the City tries to tie into the lowest rate possible.

Councilmember Howard stated there was a meeting last week regarding the Lammars Barrel Factory, and asked if she could get a summary of the meeting since she was unable to attend. Mr. Beach said they had a meeting on Friday with various members of EPA and their consultant that prepared a preliminary re-use study for the Lammars Barrel Factory site. He explained they went over the various alternatives that were available in terms of zoning requirements for a business, industrial, and for potential parkland on the site. He said they described in depth what some of the restrictions might be when they develop the corrective action. Mr. Beach stated it is a general study that they do to create potential uses when they are done with the site so that the owners and the public can have a chance to comment on those uses.

Councilmember Howard asked what the next step in the process is. Mr. Beach stated they are preparing their Feasibility Study on what remedial action they will be taking and should be completing that in the summer/fall time frame. He explained they will be having a public hearing in that time frame that will identify how the corrective action is going to be taken and what type of action is going to be done. Mr. Beach said in order to move this process forward, EPA is going to separate the site into the on-site itself and the population plume that is off-site will be addressed later because more drilling and testing is needed. He explained EPA does want to go on-site and remove the harmful materials and do the treatment in the near term, which is approximately two to three years.

Councilmember Vann stated Youth Council held a winter dance on Saturday, February 20th, and the purpose of the dance was to raise money for Special Wish. She explained they charged \$15 to participate, and raised over \$2,000 to donate. Special Wish is an organization that provides special wishes to people with life threatening illnesses. Councilmember Petrak asked how many were in attendance. Councilmember Vann said they sold over 150 tickets.

Councilmember Wallace congratulated Melissa Gillaugh for being the City of Beaver Creek 2009 Employee of the Year.

Councilmember Wallace stated Council had heard about the TEPPCO line, and explained it is a pressurized gas crude oil line that is 40 years old that runs through Beaver Creek onto Lebanon and then to Texas. She stated trees were

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cleared several weeks ago, and requested a presentation from TEPPCO to the citizens to see what TEPPCO's plans are. Councilmember Wallace stated after the trees are cleared the next step would be to put new pipe in, and she felt the citizens need to know what the plans are of this company. Mayor Hadley said that Council agrees, and staff will see if they will give Council and the citizens a presentation.

Vice Mayor Jarvis stated on Saturday, February 13th, he attended the Youth Council Senior Prom that was held at the Heartland Nursing Home. He explained it was a wonderful experience and was very impressed with the event.

Vice Mayor Jarvis wished his nephew, Collin, a Happy Birthday.

Mayor Hadley stated he is a member of the Beaver Creek Rotary Club, and explained they are having a speaker this Friday, and it is James Terpenning the recipient of the Extreme Home Makeover show. He explained part of the project of Rotary is to stamp out Polio in the world, and it is called Polio Plus. Mayor Hadley explained many members of the Rotary contribute annually, and they are in a project currently where they are trying to raise 200 million dollars. He stated if they raise that amount, Bill Gates is willing to contribute 355 million dollars. Mayor Hadley said James Terpenning is a survivor of Polio, and will be discussing his story as well as his Extreme Home Makeover experience.

Councilmember Howard asked if guests were welcome. Mayor Hadley said guests and public are welcome and it starts at noon at Walnut Grove Country Club.

Councilmember Giambrone MOVED to adjourn the meeting at 7:40 p.m. seconded by Councilmember Howard. Motion was PASSED by unanimous voice vote.

Mayor Hadley

ATTEST:

Deputy Clerk
cmin022210