

September 4

2008

Ontario City Council met in regular session on September 4, 2008 in the City Offices, with Council President Dave Metzger presiding. The meeting opened at 7:11 p.m. with the Pledge of Allegiance.

The following persons were in attendance when roll was called: Council members Dan Zeiter, Mark Weidemyre, Leon Blackwell, Barry Lewis, Paul Williams, Charlotte Hellinger and Joseph W. Cinadr; Mr. Metzger; Mayor Kenneth Bender; Law Director Rebecca Thomas; Service/Safety Director Charles Au; and Clerk of Council Cathy VanAuker. A number of interested citizens were present in the audience.

The minutes of the regular Council meeting of August 14, 2008 were presented for approval. Mr. Lewis made a motion to approve the minutes and Mr. Cinadr seconded the motion. At roll call, seven members voted Aye, zero Nay, and the motion to approve the minutes passed.

PUBLIC COMMENTARY

Sue Martin, 3616 N. Mary Lou Lane and also a business owner at 1689 W. 4th Street, came before Council to say: I have duplicate concerns, both as a citizen and a business owner. Two different areas: One, the parade was wonderful, I liked the parade, it was good. But I understand we paid people to be at the parade, is that correct? Mr. Au said, so far we've paid one band for their costs for bringing their band and driver and there will probably be a bill from the other one. Mrs. Martin asked, so we aren't paying the third band anything? Mr. Au said there was not a third band. Mrs. Martin then asked, so we are paying all of the bands that were there equally? Mr. Au said they did not pay the Ontario band. Mrs. Martin then asked, because it cost them nothing to be there? Mr. Au responded, they did not have to transport their people. Mrs. Martin continued by saying, I'm just concerned about that because I thought there was a budget. Mr. Au clarified, City funds were not used to pay them, it was donations.

Mrs. Martin continued. The second thing, in sitting through Caucus, the line item that went up \$20,000. As a business owner, home owner and citizen at-large, you're always watching your finances. I understand that Council can do so much and I understand the elected officials can do so much and the hired officials that are in charge of that. I'm very, very concerned with this whole situation, it was about two different employees, not just one employee who happened to be the Chief of Police, but there was another employee that Rebecca mentioned that we've had to do some legalities for. It seems like there might be a problem there. If I have two different areas in my business where I've had to pay a lawyer to bail my butt out, I would think there needs to be some studying that. I don't know where the blame lays, I don't know who's to blame, I understand there is a lot of bickering among everybody and there's a lot of ill will. I think it is time that Council, the Administration, the hired Administration, and our Legal Department, sit down and solve this before we bankrupt this City. It's something we've always been proud of. I've said this from the beginning, that we've been proud that we've been good with our money. I have a business that's in this City, I have a home that's in this City, I don't want it to lose its value because we can't get together and solve this issue. I don't know where the problem is, I have my own opinions, I've not been in there on it so I can't say. But, I'm just saying, this is getting to be ridiculous and when we sat here and listened to it today, it sounded ridiculous. I just don't understand why as reasonable people, we're all smart people, I don't understand why we can't all just get together and get the darn thing solved. That's it.

Next to come before Council was Mark Arnold, 182 Lexington-Ontario Road, to say: I came before you a little over two years ago to talk to the Administration about their mistreatment and mishandling of the Chief McClaran firing/retirement. Over the past two years you have overspent on outside lawyers, wasted taxpayer's money on what should have been a simple matter. You should have honored a thirty plus year employee but you chose to push the wrong man. I've talked to Tim as a friend, to check on him and his wife as the months unfolded and as I anticipated you used the backing of a multimillion dollar entity, aka, the City of Ontario, against a citizen/employee, fully expecting him to eventually cave-in to the financial pressure and physical stress. I would not have had the stomach for your antics nor, if the general public were honest with themselves, neither would they. How many people would have spent two

years having to rehash their lives in judicial procedures all the while the clock is ticking to pay a lawyer? Who would have spent over \$30,000 of their own money with no promise of a favorable outcome? To the Administration, Mayor Bender, Chuck Au, and Rebecca Thomas, I told you two years ago that a lot of time, effort, and money would be spent, and now I can honestly say, I told you so. I hope you finally get the message from the Ohio Supreme Court, not Mayor's Court, not City Court, not Commons Pleas Court, not Appellate Court, but the Ohio Supreme Court, that's determined that you messed up and that you were in the wrong all at a cost of a minimum of \$100,000 to the taxpayers of Ontario. And, that's just for legal purposes. You created the problem and now you, the Administration, must suffer the consequences. You ignored public comment, you ignored Council's suggestions and you have now created a very bad problem for the law enforcement officers and their families that would be impacted by your lack of forethought. I do feel bad for the families and the officers and will wait to see how this impacts the whole department. Tim did not create this issue, you did, and you alone: Mayor Bender, Chuck Au and Rebecca Thomas, no one else.

One last comment, it has been mentioned that the sides should have talked to each other. Well, you beat down Tim and Kathy so much that in January of this year, he was willing to throw in the towel. He wanted what was less than due to him for benefits, I believe, somewhere in the neighborhood of \$50,000 less than I believe the \$80,000 due. Pardon me if that's wrong, but it is close. You sat in a meeting with an official mediator and sat there and offered \$27 to Tim McClaran, not \$27,000, not \$270,000 but \$27 because the City of Ontario has spent a lot of money defending this case, and so therefore, you wanted to offer \$27. So, I just wanted to remind the public, that when you say what should happen, these sides should get together, it didn't happen.

Mr. Metzger advised Mr. Arnold not to make any more comments about what happened in the mediation. Mrs. Thomas said it could subject him to criminal proceedings.

Mr. Arnold continued. Thank you very much for educating me on that. As I understand that you all get educated on the process of executive session, I was told by someone within the Secretary of State's office, there is no executive privilege in executive session, but I thank you for that clarification. I hope that the citizens of Ontario remember next year when you run for office how this case was handled and, from what I hear, the other employee cases that have been mishandled. Thank you very much.

COMMITTEE REPORTS

Mr. Zeiter distributed copies of a bill for legal services that was presented to him, as the Chairman of the Finance Committee, from the City Auditor. The fees are the result of the thirty-seven questions the Law Director submitted to the Auditor relating to her job performance and responsibilities. Mr. Zeiter stated he did not understand the reason for accusatory questions and the Auditor felt the need for legal advice in answering the questions.

Mr. Zeiter made a motion authorizing payment of \$408 from the Auditor's sundry account, 101-7040-52410, to Halligan & Associates, Attorneys at Law, Ashland, Ohio. Mrs. Thomas commented on the legal fee dated 5/31/2008; she said a letter was never sent to her office and if they wanted more information regarding the questions they would need to go into executive session. Mr. Weidemyre said he would like to go into executive session; others suggested scheduling a Personnel meeting in order to hold an executive session when the Auditor could be present. Mr. Zeiter reminded Council members they have already seen copies of the questions and to put themselves in the same position of being required to answer questions, would they have sought legal advice?

Mr. Weidemyre seconded the motion. Hearing no further discussion, four members cast their votes Aye, one Nay by Mr. Blackwell, two Abstain votes by Mr. Williams and Mr. Cinadr, and the motion authorizing payment was approved.

Mr. Weidemyre reported on the Committee of the Whole meeting held August 14, 2008, pertaining to the sign legislation received from Planning Commission.

- The Committee agreed to increase the number of banners to six, plus one at the event site.
- The size of the banner was increased to 27 sq. ft. to accommodate the more economical industry standard.
- The Committee voted to increase the number of real estates signs to two. This will allow for an additional sign to specify payment options or an open house.
- Contractors will only be able to display their signs while working on the property.
- All of these changes are reflected in Ordinance No. 08-39 which is on tonight's agenda.

Mr. Blackwell congratulated the Mayor and all who were involved in the 50th Anniversary Celebration. He was very pleased and proud of the event put on by the City.

Mrs. Hellinger announced a Parks Committee of the Whole meeting is scheduled for September 18, 2008, at 5:00 p.m.

Mr. Cinadr stated the minutes from the last Economic Development meeting are available.

Mr. Lewis and Mr. Williams had no report this evening.

MAYOR'S REPORT

Mayor Bender thanked the members of the 50th Anniversary Committee Celebration.

- Ontario Rotary: Dave Rehfeldt and Andy Chalk
- Ontario Lions Club: Randy Hanlon
- 4th of July Committee: John Williams
- Ontario Growth Association: Greg Boyce
- City Council: Dave Metzger

Mayor Bender also thanked the remaining founders who were able to attend, past mayors and the wives who stood in for them, and Council members who were present. He hoped the community enjoyed the celebration.

Mayor Bender continued his report.

- Paving projects are slightly ahead of schedule due to the dry weather and most projects should be completed by the end of the month.
- The first phase of the I&I project on the drainage area of the Rock Road Lift Station is coming to a close. Bids for the second phase should be taken at the end of the month.

SERVICE/SAFETY DIRECTOR'S REPORT

Mr. Au had no report.

LAW DIRECTOR'S REPORT

Mrs. Thomas had no report.

Mr. Zeiter asked Mrs. Thomas about an invoice from the attorneys in Cleveland showing a \$3,000 charge for the State of Ohio ex rel, Rebecca M. Thomas, Law Director vs City Council of Ontario, case #05CV32 Richland County Common Pleas Court. The case is from 2005. Mrs. Thomas said it was put in wrong in their computer and they are trying to get it changed. The

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date fits in with the other dates and description with the McClaran case; this is for the McClaran case.

MISCELLANEOUS MATTERS

Mr. Metzger said the 50th Anniversary was a great celebration. He attended each of the three days and would like to see a similar community gathering every year. It was a lot of work, but those who didn't attend definitely missed out.

Mr. Weidemyre thanked the Ontario Growth Association for hosting the Party in the Park.

Mr. Metzger stated, the Ontario Growth Association is sponsoring the Christmas Tree Lighting the first Thursday in December which is also a Council meeting. He provided options to Council members on scheduling the two events.

Mr. Williams made a motion to hold the December 4th Caucus meeting at 7:15 p.m. and Council at 8:00 p.m. Mr. Cinadr seconded the motion. Seven members cast their votes Aye, zero Nay, and the motion passed.

CONSIDERATION OF ORDINANCES AND RESOLUTIONS

ORDINANCE NO. 08-36

(SECOND READING) AN ORDINANCE REPEALING CHAPTER 721 PEDDLERS AND SOLICITORS OF THE CODIFIED ORDINANCES OF THE CITY OF ONTARIO.

Mr. Blackwell made a motion to suspend the rules requiring the reading of Ordinance No. 08-36 on three separate days. Mr. Williams seconded the motion. Five members cast their votes Aye, two Nay votes by Mr. Zeiter and Mr. Weidemyre, and the motion to suspend the rules failed. Mr. Zeiter read Ordinance No. 08-36 for the second time, by title only.

RESOLUTION NO. 08-14

A RESOLUTION AUTHORIZING THE SERVICE/SAFETY DIRECTOR TO ENTER INTO A CONTRACT ON BEHALF OF THIS CITY WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR A TRAFFIC STUDY OF THE LEXINGTON SPRINGMILL TRAFFIC CORRIDOR.

Mrs. Hellinger made a motion to suspend the rules requiring the reading of Resolution No. 08-14 on three separate days. Mr. Cinadr seconded the motion. Seven members cast their votes Aye, zero Nay, and the motion to suspend the rules passed. Mr. Weidemyre read Resolution No. 08-14 for the first time, by title only.

Mr. Weidemyre made a motion to adopt Resolution No. 08-14. Mr. Zeiter seconded the motion. Hearing no discussion, seven members cast their votes Aye, zero Nay, and Resolution No. 08-14 was adopted.

RESOLUTION NO. 08-15

A RESOLUTION AUTHORIZING THE SERVICE/SAFETY TO ENTER INTO AN AGREEMENT WITH CAROLINA CASUALTY INSURANCE COMPANY TO REIMBURSE THE CITY OF ONTARIO FOR EQUIPMENT, LABOR AND MATERIALS AND DECLARING AN EMERGENCY.

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Mr. Cinadr made a motion to suspend the rules requiring the reading of Resolution No. 08-15 on three separate days. Mr. Williams seconded the motion. Seven members cast their votes Aye, zero Nay, and the motion to suspend the rules passed. Mr. Blackwell read Resolution No. 08-15 for the first time, by title only.

Mr. Blackwell made a motion to adopt Resolution No. 08-15. Mr. Williams seconded the motion. Hearing no discussion, seven members cast their votes Aye, zero Nay, and Resolution No. 08-15 was adopted.

ORDINANCE NO. 08-37

AN ORDINANCE REPEALING CHAPTER 909 DRIVEWAYS OF THE CODIFIED ORDINANCES OF THE CITY OF ONTARIO AND AMENDING 1119.03(e) STREET AND UTILITY IMPROVEMENTS AND 1145.07 DRIVEWAYS.

Mr. Blackwell made a motion to suspend the rules requiring the reading of Ordinance No. 08-37 on three separate days. Mr. Cinadr seconded the motion. Five members cast their votes Aye, two Nay votes by Mr. Zeiter and Mr. Weidemyre, and the motion to suspend the rules failed. Mr. Lewis read Ordinance No. 08-37 for the first time, by title only.

Mr. Zeiter made a motion to strike the second line of Ordinance No. 08-38, changing of funds in 101-7010-52301, Personnel & Arbitration, from \$50,000 to \$70,000, because it was not discussed during the Finance meeting. Mr. Weidemyre seconded the motion. Hearing no discussion, five members cast their votes Aye, two Nay votes by Mr. Weidemyre and Mr. Cinadr, and the motion to strike the Personnel & Arbitration line from Ordinance No. 08-38 passed.

ORDINANCE NO. 08-38

AN ORDINANCE AMENDING ORDINANCE 08-11 KNOWN AS THE PERMANENT APPROPRIATION ORDINANCE, FOR 2008 BY MAKING ADDITIONAL APPROPRIATIONS TO THE GENERAL FUND, CAPITAL IMPROVEMENT FUND AND SPECIAL REVENUE FUND.

Mr. Williams made a motion to suspend the rules requiring the reading of Ordinance No. 08-38 on three separate days. Mr. Cinadr seconded the motion. Seven members cast their votes Aye, zero Nay, and the motion to suspend the rules passed. Mr. Williams read Ordinance No. 08-38 for the first time, by title only.

Mr. Williams made a motion to adopt Ordinance No. 08-38, as amended. Mr. Zeiter seconded the motion. Hearing no discussion, seven members cast their votes Aye, zero Nay, and Ordinance No. 08-38 was adopted.

ORDINANCE NO. 08-39

AN ORDINANCE AMENDING SECTIONS 1146.03(c), 1146.03(d) AND 1146.04(d) OF THE CODIFIED ORDINANCES OF THE CITY OF ONTARIO, OHIO.

Mr. Weidemyre made a motion to suspend the rules requiring the reading of Ordinance No. 08-39 on three separate days. Mrs. Hellinger seconded the motion. Seven members cast their votes Aye, zero Nay, and the motion to suspend the rules passed. Mrs. Hellinger read Ordinance No. 08-39 for the first time, by title only.

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Mrs. Hellinger made a motion to adopt Ordinance No. 08-39. Mr. Williams seconded the motion. Hearing no discussion, seven members cast their votes Aye, zero Nay, and Ordinance No. 08-39 was adopted.

At 7:37 p.m., there being no further business to come before the meeting, the same was adjourned upon a motion by Mr. Cinadr and a second by Mr. Weidemyre. At roll call, seven members voted Aye, zero Nay, and the motion to adjourn passed.

President of Council

Clerk of Council