

BROOKVILLE CITY COUNCIL  
REGULAR MEETING  
June 15, 2010

The Regular Meeting of the Brookville City Council was called to order by Mayor Seagraves at 7:30 p.m. on June 15, 2010 in the City Council Chambers. The Pledge of Allegiance was recited. Members Apgar, Cantrell, Duncan, Garber, Letner and Ullery; Manager Wright, Fire Chief Nickel, Police Chief Preston, Law Director Stephan and Interim Asst. City Manager/Director of Finance/Clerk Keaton were present.

Motion by Duncan, second by Cantrell to accept the Agenda as presented. All yeas, motion carried.

Motion by Cantrell, second by Apgar to accept the June 1, 2010 Regular Meeting Minutes as presented. All yeas, motion carried.

Manager Wright reported the recent sale of a 16-year old Chevy S-10 pickup truck on GovDeals online auction for \$2,520.

Manager Wright advised the contractor for Montgomery County has begun work on Salem Street and Brookville-Salem Road. The milling is done and hopefully it will be paved this week.

Manager Wright presented a letter from the Montgomery County Board of Elections advising the filing deadline for the General Election has been changed from August 19 to August 4, 2010 by 4:00 p.m. due to the Military and Overseas Empowerment (MOVE) Act and Am. Sub. H.B. 48.

Manager Wright presented a copy of a change to the policy on re-employment of an hourly OPERS retiree due to proposed changes in OPERS policy.

Member Letner inquired whether this policy applies to both hourly and salaried employees?

Member Cantrell stated that the policy doesn't need to state hourly or salary if it is worded any employee other than management positions.

Member Duncan inquired if the policy needs to address whether a Council member can resign and then be re-appointed by Council.

Manager Wright replied that the re-employment of elected officials is a separate issue governed by state law.

Member Cantrell stated after an employee retires, they can be considered for rehire once the position is posted at the posted wage and/or benefits for the vacant position.

Motion by Cantrell, second by Ullery to amend the Policy for Re-Employment of a Retiree Under Ohio Public Employee Retirement System (OPERS) as presented. All yeas, motion carried.

Member Cantrell stated there is construction equipment at the intersection of Johnsville-Brookville Road and Brookville-Pyrmont Road and inquired what type of construction is proposed at that location?

Member Letner advised it appears Montgomery County is getting ready to overlay the roadway.

Member Cantrell inquired whether this intersection is in within the Brookville city limits or is it Perry Township? Member Cantrell also asked if a stop sign could be installed for both north and southbound traffic?

Chief Preston advised this could create rear end accidents. The real problem is the hump in the roadway on Johnsville-Brookville Road. To make any changes a traffic study would need to be conducted and we would need to look at Ohio Revised Code provisions for erecting stop signs.

Manager Wright commented this is a complicated intersection with multiple jurisdictions.

Member Ullery remarked the city bench placed in front of the Market Street Café looks nice.

Mayor Seagraves thanked Manager Wright and city staff for placing 15 planters in front of the downtown businesses on Market Street. The planters are the result of a coordinated effort between the City and the Brookville Garden Club. The downtown businesses have agreed to take care of the planters in front of their establishments. Mayor Seagraves also thanked Stockslagers Nursery for their help with discounting the flowers for the planters.

Member Garber inquired how the Wastewater Treatment Plant pumps are holding up with the excessive rain we have had?

Manager Wright replied the pumps have been handling the flow well. There has been only one small episode with a return sludge pump, possibly due to lightening.

Fire Chief Nickel presented the Fire Department Alarm Incident Report for June 2 through June 15, 2010, which indicated the Fire Department responded to 48 calls during this time period. Fire Chief Nickel reported 43 of these calls were for EMS services.

Fire Chief Nickel advised he has spent a great deal of time answering letters and emails about the proposed income tax increase to fund the construction of a new fire station. Fire Chief Nickel stated he would copy this correspondence to Council for any questions or comments they may have.

Mayor Seagraves expressed condolences on behalf of Council to Police Chief Preston and his family on the recent loss of his brother-in-law.

Police Chief Preston thanked Mayor Seagraves for Council's expression of sympathy.

Police Chief Preston presented the Brookville Police Department Call Analysis for the month of May 2010. Police Chief Preston reported the Brookville Police Department responded to 400 Priority 1 calls, 96 Priority 2 calls, and 212 Priority 3 calls. The Brookville Police Department handled a total of 3,028 calls year to date, which is an increase of 340 calls or 12.6% compared to this same time last year. Total reportable incidents are up 12, or 4% from this same time last year. The Incident Log from June 1 through June 14 shows there were 35 new cases for investigation with 28 closed and 7 pending further investigation. Police Chief Preston advised 22 of the closed investigations were cleared by arrest.

Police Chief Preston advised the Brookville Chamber of Commerce Block Party held on June 13, 2010 went well with minor issues.

Mayor Seagraves commented the positioning of the Block Party certainly seemed to help with security issues.

Police Chief Preston agreed and commented that the fence blocking Market Street past Brookville Aluminum prevented the type of problems that occurred last year.

Member Garber asked Chief Preston for an update on the meetings with the local youth?

Police Chief Preston advised he has not met with the youth again since he last reported to Council because of some unavoidable issues. He intends to set a meeting soon to discuss changing the flow of the skate park as the youth suggested in the last meeting.

Law Director Stephan reported legislation for an income tax increase of .25% has been prepared for consideration by Council. Law Director Stephan thanked Finance Director/Clerk Keaton for her help with preparing this legislation.

Law Director Stephan advised in order to place an income tax levy on the ballot, Section 718.01(C) of the Ohio Revised Code requires the adoption of an Ordinance establishing the income tax and a Resolution specifying the date the election is to be held and directing the Board of Elections to conduct the election. Proposed Ordinance No. 2010-07 establishing the proposed income tax increase and Resolution No. 10-12 to put the proposed tax increase to the voters at the November 2, 2010 general election have been prepared.

Law Director Stephan stated, as Manager Wright reported earlier, the Board of Elections has moved the deadline to August 4, 2010. There is still time to have three readings of the proposed Ordinance, however the third reading will need to declare the proposed Ordinance an emergency so that it will be effective immediately upon passage and can be submitted in a timely manner to the Board of Elections. The proposed Resolution does not need to be declared an emergency because Section 4.07 (A)(3) of the Charter provides that any ordinance or resolution for the submission of any question to the electorate or the determination to proceed with an election takes effect immediately upon passage.

Law Director Stephan advised proposed Ordinance No. 2010-07 provides for a one-fourth of one percent (.25%) increase effective January 1, 2011 and continuing for a period of 25 years until December 31, 2035. It was necessary to establish a date for the levy to terminate. Law Director Stephan reported he discussed the proposed Ordinance with the Board of Elections and reviewed numerous income tax levies from other cities' and all of them are either permanent or have a fixed date of termination. The termination date of proposed Ordinance No. 2010-07 was arrived at after discussing the issue with our bond counsel, Stephen Grassbaugh, who indicated that the length of the bonds would probably not exceed 25 years.

Law Director Stephan advised the language of the proposed income tax levy states the purpose of the levy is for construction of a new fire station, related on-site and off-site infrastructure improvements for the new fire station and other fire capital improvements. This will allow us to pay any debt related to the fire station and infrastructure improvements that are needed for the fire station and any excess funds could be used for fire capital improvements. The proposed Ordinance amends any section of the current income tax Ordinance that would be affected by this income tax increase if it is passed by the voters. The proposed Ordinance will only go into effect if it is passed by the voters in November.

Law Director Stephan advised there are several sections of the current income tax code that will be amended if the income tax increase is approved by the voters and he can address any of the sections that Council may have questions about.

Law Director Stephan stated proposed Resolution No. 10-12 directs the Montgomery County Board of Elections to place the question of increasing the municipal income tax from 1.75% to 2.00% to become effective January 1, 2011 and continuing for a period of 25 years on the ballot at the General Election in November of 2010.

Law Director Stephan advised Section II of the proposed Resolution sets forth the ballot language as it would read on the ballot. The section includes the items, such as Social Security income, that would not be taxed so the issue will be clear to the voters.

Member Garber stated by defining what would not be taxed, the proposed Resolution does not have to include the words "earned income".

Law Director Stephan stated that is correct.

Member Duncan stated that some older citizens have expressed fear to him that they will have to pay income tax on their retirement income.

Member Duncan asked how many citizens the proposed levy would and would not affect?

Finance Director/Clerk Keaton stated there is no way to get that figure without canvassing but estimated it would not affect 40-50% of our citizens.

Member Garber stated the levy should include tax on retired citizens because they are getting a direct benefit from the new fire station. The working citizens who are also paying property tax are paying for fire service for both themselves and the retired citizens.

Member Garber inquired if the bonds were paid off in 20 years would the income tax continue for another 5 years?

Law Director Stephan stated that if the levy is tied solely to the payment of the bond debt, any tax levy monies the City takes in above the bond payment in a particular year could be subject to legal and audit issues about what the City could do with the excess funds in that year. It could be assumed that any excess monies could be applied as additional payments on the bond. When the bonds are paid off, it may not match the end date that was set for the levy. At that point Council would have to take affirmative action to determine what to do with the excess.

Member Cantrell stated that the proposed Ordinance and Resolution are worded so that any excess funds from the tax levy can be used to purchase items that are needed for the fire station. Member Cantrell stated that if the proposed tax levy monies can only be used to pay for the construction of a fire station it would be comparable to building a house and then not having any money to furnish it.

Manager Wright replied that is correct. If the proposed Ordinance does not state what the tax levy monies can be used for, the money could not be spent unless the issue was put back on the ballot to determine how it could be spent. Manager Wright advised that we know what the estimated cost is for constructing a new fire station but will not know the exact cost until it goes out for bid, which cannot be done until the funding is in place. If the proposed Ordinance does not define how the tax monies can be spent, we won't be able to spend the monies.

Law Director Stephan stated in preparing the proposed Ordinance, he took into consideration Council's comments that the tax levy monies should be used for the construction of the new fire station. Law Director Stephan stated he also took into consideration designating where excess monies could be spent should there be any. If the language of the proposed Ordinance is changed to state the tax levy monies can only be used for bond debt, it could put us in a situation where we have no legal authority to spend any excess tax levy monies.

Member Letner stated he understands the proposed Ordinance needs to include this wording but he is concerned that the public will get the wrong perception.

Member Garber inquired whether the proposed Ordinance could state the tax levy will end on December 31, 2035 or sooner?

Law Director Stephan replied the proposed Ordinance must specify an end date. The end date was set at the end of a calendar year because payroll records are on calendar years. It wouldn't make sense for payroll departments to stop or start an income tax in the middle of a year.

Member Duncan inquired what would happen if the economy declines during the next 25 years and at the end of that time the proposed fire station is not paid off?

Law Director Stephan replied that is a pitfall of an income tax levy. The exact revenue stream cannot be predicted.

Member Garber inquired whether the interest rate would be fixed on the bonds issued to construct the new fire station?

Finance Director/Clerk Keaton replied the bonds would most likely be issued at a fixed interest rate.

Law Director Stephan stated Council does have the power to change the income tax Ordinance in the future if the economy would change. The other option Council can consider is a bond issue funded through a property tax. This would be for a maximum period of time and would end sooner if the bonds are paid off sooner.

Member Cantrell asked whether Brookville receives any tax from residents who are employed in another city?

Finance Director/Clerk Keaton responded under our current income tax Ordinance we do not receive any monies from residents who work in a city where the income tax rate is equal to or greater than ours.

Member Duncan stated Council could do away with this 100% exemption.

Motion by Duncan, second by Apgar to read proposed Ordinance No. 2010-07. All yeas, motion carried.

Member Garber inquired if the proposed Ordinance could define “other fire capital improvements” that the tax levy monies could be used for?

Law Director Stephan replied other fire capital improvements can be defined including items such as fire equipment or building maintenance.

Member Ullery commented if we specifically define what the monies can be used for; it would limit us on how the tax monies can be spent.

Member Cantrell advised if the proposed Ordinance defines what the tax monies can be used for it will limit what future Council members can do with the tax monies. Council should have the freedom to spend the tax monies on fire capital improvements based on staff recommendations.

Member Garber commented Council is already limited by our Charter.

Member Duncan stated Council is not limited in how current income tax monies are spent and the proposed Ordinance should not limit how those tax monies are spent either.

Member Seagraves advised the citizens will have a chance to make that decision on the ballot. It is Council’s job to educate them properly.

Member Ullery stated it is obvious that Law Director Stephan did a lot of research before preparing the proposed income tax Ordinance. It is adequately worded and does not tie anyone’s hands. Council should move forward and vote on the proposed Ordinance at this time.

Motion by Ullery, second by Cantrell to accept the first reading of proposed Ordinance No. 2010-07. All yeas, motion carried.

Motion by Duncan, second by Apgar to read proposed Resolution No. 10-12. All yeas, motion carried.

Motion by Cantrell, second by Apgar to accept the first reading of proposed Resolution No. 10-12. All yeas, motion carried.

A Public Meeting was set for proposed Ordinance No. 2010-07 for July 6, 2010 at 7:30 p.m.

Finance Director/Clerk Keaton reported we currently have two vacancies on our Civil Service Commission and two residents, Amanda Bertram-Zimmerlin and Mike Moran, have indicated a desire to serve on this Commission. Finance Director/Clerk Keaton recommended that Council appoint Amanda Bertram-Zimmerlin to fill the unexpired term ending December 31, 2011 and Mike Moran to fill the unexpired term ending December 31, 2013 on the Civil Service Commission.

Motion by Garber, second by Ullery to appoint Amanda Bertram-Zimmerlin to fill the unexpired term of Bob Apgar ending December 31, 2011 and Mike Moran to fill the unexpired term of Todd Gentis ending December 31, 2013 on the Civil Service Commission, with both appointments to be effective immediately. All yeas, motion carried.

Finance Director/Clerk Keaton advised the June Planning Commission Meeting has been cancelled due to lack of items for an Agenda.

Mayor Seagraves thanked everyone who participated in the Chamber of Commerce Block Party. The Chamber did a fine job and Service Department Superintendent Ron Brandt provided his services both before and after the Block Party. Mayor Seagraves also commended the Police Department for their services.

Mayor Seagraves wished everyone a safe and happy Fourth of July Holiday.

Member Duncan advised the fire levy Committee met with the Clay Township Trustees last week. The meeting went well and a follow up meeting has been scheduled on June 24, 2010.

Member Ullery commented he feels positive about the meeting and believes we can work together with the Trustees in a co-operative effort to provide a positive outcome for both parties.

Motion by Duncan, second by Apgar to adjourn. All yeas, motion carried.

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Sonja M. Keaton, Clerk

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David E. Seagraves, Mayor