

BROOKVILLE CITY COUNCIL
REGULAR MEETING
August 18, 2009

The Regular Meeting of the Brookville City Council was called to order by Vice Mayor Ullery at 7:30 p.m. on August 18, 2009 in the City Council Chambers. The pledge of allegiance was recited. Members Cantrell, Duncan, Garber, Letner and Reel; Manager Wright, Law Director Stephan, Police Chief Preston and Director of Finance/Clerk Keaton were present. Mayor Seagraves and Fire Chief Nickel were absent.

Motion by Duncan, second by Garber to accept the Agenda with the addition of proposed Ordinance No. 2009-12. All yeas, motion carried.

Motion by Reel, second by Garber to accept the August 4, 2009 Regular Meeting Minutes as presented. All yeas, motion carried.

Manager Wright reported four bids were recently opened for the "2009 Asphalt Resurfacing and Pavement Removal Project" and recommended that Council accept the lowest and best bid from Butler Asphalt Company, LLC. Manager Wright reported he has not decided yet if the City will keep the asphalt material that is being removed at this time, or if the Contractor keeps materials.

Motion by Garber, second by Letner to accept the bid of \$59.55 per ton for approximately 1,735 tons of 448 asphalt concrete overlay, \$1.66 per square yard for pavement removal City keeps material and \$1.46 per square yard for pavement removal Contractor keeps material for approximately 12,115 square yards from Butler Asphalt Company, LLC as the lowest, responsive and responsible bid, with the total project cost not to exceed \$124,000. All yeas, motion carried.

Manager Wright reported Council should have a copy of a letter from Aaron Wilcox, Director of Collective Brands Eastern Distribution Center, officially requesting Council to rename Payless Way to Collective Way. Manager Wright reported Mr. Wilcox spoke with North American Nutrition Company, located at 10 Payless Way, and they support the street name change. Manager Wright reported shortly after Payless made the commitment to move here, they acquired Stride-Rite. By changing the street name to Collective Way this will avoid confusion for Stride-Rite customers ordering from the e-commerce site for Collective Brands.

Motion by Duncan, second by Garber to read proposed Ordinance No. 2009-12. All yeas, motion carried.

Motion by Duncan, second by Cantrell to accept the first reading, dispense with the second and third reading and adopt Ordinance No. 2009-12 entitled "AN ORDINANCE CHANGING THE NAME OF PAYLESS WAY TO COLLECTIVE WAY IN THE CITY OF BROOKVILLE, OHIO, AND DECLARING IT AN EMERGENCY." All yeas, motion carried.

Manager Wright reported Bob Batz, with the Brookville Fire Department, is present tonight with an official request for the Brookville Fire Department to hold their annual Fire Prevention Parade.

Bob Batz, representing the Brookville Fire Department, requested Council permission to hold their 62nd Fire Prevention Parade and Festival on Saturday, October 3. Activities throughout the day will begin with a community garage sale on Market Street. There will be live music on the bandstand at Market and Mulberry Streets from 10:00 a.m. to 1:00 p.m. The Fire Prevention Parade will begin at 2:00 p.m. and be led by the Brookville High School Marching Band. The Antioch Shriners will once again participate in the parade. Discussion was held on changing the parade route, but the consensus is to continue the same parade route as in past years.

Motion by Duncan, second by Reel to allow the Brookville Fire Department to hold their 62nd Fire Prevention Parade and Festival on Saturday, October 3, with the parade to begin at 2:00 p.m. and to block the streets as in past years. All yeas, motion carried.

Manager Wright reported four bids were recently opened for the W. Westbrook Road Improvement Project and recommended Council accept the lowest and best bid from Associated

Excavating, Inc. Manager Wright reported the major difference in the bids were the unit prices, and where this comes into play is in two areas, scope of work or Change Orders and secondly in determining assessments. Manager Wright stated he does not anticipate any change in the scope of the project, or any Change Orders. We received a wide range of costs for curbs and sidewalks. The spread was from \$3.40 to \$5.10 per square foot for sidewalks, and \$12.00 to \$18.25 per lineal foot for curbs. In the past we have always assessed the installation of sidewalks and curbs based on the costs in the awarded bid. Associated Excavating, Inc. did not have the lowest unit cost for sidewalk and curb. Manager Wright suggested with this project that we use the lowest unit price submitted to determine the assessment, which is \$3.40 per square foot for sidewalks and \$12.00 per square foot for curb.

Motion by Garber, second by Letner to accept the bid from Associated Excavating, Inc. of \$441,251.00 for the W. Westbrook Road Improvement Project as the lowest, responsive and responsible bid as recommended by Manager Wright. All yeas, motion carried.

Motion by Garber, second by Reel to assess the property owners of the W. Westbrook Road Improvement Project \$3.40 per square foot for sidewalk installation and \$12.00 per lineal foot for curb installation. All yeas, motion carried.

Manager Wright reported Brookhaven and Good Samaritan Hospital are creating a Wellness Program that will be available to all Brookville residents. The Wellness Program will be held at Brookhaven on a monthly basis on various days and times. They are currently in the beginning stages of creating this program and Chief Nickel will be working with Brookhaven on this project and will provide additional information at a later meeting.

Manager Wright requested an Executive Session on a Real Estate Matter.

Manager Wright reminded Council and those in attendance that the Montgomery County Commissioners will hold their next Meeting here in the Brookville Council Chambers on Tuesday, August 25 beginning at 7:00 p.m. Everyone is welcome to attend.

Vice Mayor Ullery recessed the Regular Meeting of Council at 8:01 p.m. for the Public Hearing, which is a combined meeting with Council and Planning Commission, on proposed Ordinance No. 2009-09, which adopts regulations on Donation Bins, proposed Ordinance No. 2009-10, which adopts regulations on use of Portable On-Demand Storage Units, and proposed Ordinance No. 2009-11, which adopts regulations on the installation and use of Solar Energy Equipment in the City of Brookville, Ohio.

The Public Hearing was recorded and is on file with the Clerk at the Municipal Offices.

Clerk Keaton announced a Legal Notice was published in the August 5 and 12 editions of the Brookville Star and it was also posted on the City's website advising of this Public Hearing. The City Office did not receive any phone calls, but one individual stopped in the office for a copy of proposed Ordinance No. 2009-10, which adopts regulations on use of Portable On-Demand Storage Units.

There was no one present to speak at the Public Hearing.

Clerk Keaton asked Law Director Stephan for a staff report.

Law Director Stephan stated proposed Ordinance No. 2009-09 is designed to provide zoning regulations for donation bins. The City has seen increased interest in placing donation bins from various charitable organizations, and it was felt by Planning Commission and City Council that we needed to adopt some basic rules for placement of donation bins. We've established proposed Section 1157.11, which outlines the rules for donation bins. Donation Bins located inside a building used as a church, school, non-profit organization or inside a commercial or industrial building is a permitted use and shall not require a zoning permit. If the donation bin is going to be located on the exterior of a church, school, non-profit organization, or commercial or industrial building then they would have to have Planning Commission approval for location of the bin as a temporary accessory structure. Planning Commission may approve a Donation Bin upon compliance with the following standards: The property owner has approved in writing the location of the donation bin on the property. The donation bin is not located within any required

front yard, rear yard or side yard setback for the zoning district, access easement, driveway, parking area, fire lane, or any other area prohibited by the Zoning Code or Building Code of the City of Brookville. Also, the placement of the donation bin shall not impede traffic or visually impair any motor vehicle operation within a parking lot or from a public street or alley. The donation bin is being used by a duly registered charitable organization and the donation bin shall contain the name, address and phone number of the charitable organization. The donation bin shall not exceed five (5) feet in height, and shall not exceed four (4) feet in width. Only one donation bin shall be permitted on a property at any time. The donation bin complies with all other applicable standards and requirements for special uses as set forth in the Code of Ordinances. Planning Commission shall limit the approval of the Donation Bin to a maximum of one (1) year, and shall require reapproval of the temporary accessory structure permit for the Donation Bin at the expiration of the approved temporary accessory structure permit. The charitable organization shall be primarily responsible for maintenance, upkeep, and servicing of the donation bin. Donation bins shall be emptied of donated goods by the charitable organization in a timely manner to prevent overflow of the goods from the donation bin. However, in the event the charitable organization fails to adequately maintain and service the donation bin, then the property owner of the property where the donation bin is placed shall be responsible for maintenance and service of the donation bin. In the event that the donation bin is not properly maintained and serviced, the Zoning Enforcement Officer may issue a notice of violation of this Ordinance and order the immediate removal of the donation bin. Donation bins are not permitted on residential properties, and are not permitted on vacant properties.

Law Director Stephan stated proposed Ordinance No. 2009-10 is on Portable on-demand storage units. Again, this is something that we're seeing in the City being used by many residents and we do not have any zoning regulations on them. Planning Commission and City Council felt we needed to adopt some basic rules governing location and placement of Portable on-demand storage units. To summarize the rules, Portable on-demand storage units may be located as a temporary structure on a property within the city for a period of seventy-two (72) hours in duration from time of delivery to time of removal and shall not require a zoning permit. Portable on-demand storage units may be located as a temporary structure on a property within the city for a period exceeding seventy-two (72) hours in duration from time of delivery to time of removal only upon application for a temporary accessory use permit. The Zoning Enforcement Officer may approve the temporary accessory use permit for a period of time that shall not exceed thirty (30) days upon demonstrated need by the property owner for location of a portable on-demand storage unit on the property for a period of time exceeding seventy-two hours. The Planning Commission shall review the temporary accessory use permit issued by the Zoning Enforcement Officer at its next regularly scheduled meeting, and may modify, extend or terminate said temporary accessory use permit after review of the application and evidence regarding the reasons for the continued location of the portable on-demand storage unit on a property for a period exceeding seventy-two (72) hours. Portable on-demand storage units shall not be located closer than three (3) feet for any side or rear property line, and shall be located behind the applicable front yard setback for the zoning district in which the property is located. Portable on-demand storage units shall be located on the property on a hard surface, as defined in 1103.03 of the Code of Ordinances. No more than one (1) portable on-demand storage unit may be located on a property within the city at one time. Portable on-demand storage units shall not exceed eight (8) feet six (6) inches in height, ten (10) feet in width or twenty (20) feet in length. Portable on-demand storage units shall not be located on a property more than two (2) times in a calendar year. It shall be the responsibility of the property owner to secure a portable on-demand storage unit so that it does not endanger the safety of persons or property in the vicinity of the portable on-demand storage unit. The Zoning Enforcement Officer may order the immediate removal of a portable on-demand storage unit that is not properly secured and is a danger to the safety of persons or property in the vicinity of the portable on-demand storage unit. Any portable on-demand storage unit which is not removed at the end of the time for which it may lawfully remain in place, or immediately upon the order of the Zoning Enforcement Officer for removal of the portable on-demand storage unit for safety reasons, may be removed by the City immediately, without notice, and the cost of such removal, together with the cost of administration of its removal, may be assessed against the property on which the portable on-demand storage unit was located and may be certified to the County Auditor as an assessment against the property.

Member Letner commented in Section E it states no more than one at a time. Could we add additional language that reads, unless approved by the Zoning Officer? Due to the size of these, they are about the size of a small storage shed, what happens if someone has to rehab a house for whatever reason or due to a fire, more than one might come into play.

Law Director Stephan stated the concern on this issue with Planning Commission is, particularly on a large commercial or industrial property, we are trying to avoid multiple units. This provision could be changed to permit multiple units if Planning Commission and Council desires.

Member Letner commented he was thinking more on the line of residential.

Member Cantrell asked if Planning Commission has the ability to allow somebody to have more than one?

Law Director Stephan stated no, the way it's drafted right now, they can only approve one at a time.

Member Garber commented the Ordinance states it shall not be in the setback required, what if someone has it in their driveway?

Law Director Stephan stated the idea is to hopefully have it placed behind the front yard setback so it is not blocking the sidewalk. They would have to be placed on the driveway closer to the house. Law Director Stephan stated some properties in some districts, depending on the location of the house and how close it is to the setback, that could be an issue. In some of the older parts of town that rule could be a problem in terms of enforcement. One of the alternatives we could look at is require it to be behind the sidewalk.

Member Letner stated he is aware of a situation where a local business had two on their property for three or four months. The reason is they were remodeling a section of their building. They had the room to do it. They put it in their parking lot.

Law Director Stephan commented what we could permit more than one unit at a time if specifically approved by Planning Commission. Planning Commission could review special circumstances for a need for more than one Portable on-demand storage unit at a time.

Law Director Stephan stated Ordinance No. 2009-11, adopts regulations on solar energy equipment. Again, we don't have any specific zoning regulations right now on solar energy equipment. Planning Commission and City Council requested that we look at adopting regulations. The basic principal in this Ordinance is that we do want to encourage the use of solar energy equipment for collection of solar energy to provide electricity, heat, or otherwise provide energy to a residential, commercial, or industrial building and it shall be a permitted accessory use in all zoning districts in the City of Brookville. Roof mounted solar energy equipment shall be permitted in all zoning districts provided the roof mounted solar energy equipment shall not exceed the maximum building height for the zoning district, and shall be installed in compliance with the applicable building code. Ground mounted solar energy equipment shall be permitted in the front yard, side yard, and rear yard of a commercial or industrial property, but shall not be located within the applicable front yard, side yard, or rear yard setback of any commercial or industrial property. Ground mounted solar energy equipment shall be installed in compliance with the applicable building code. Ground mounted solar energy equipment shall not be permitted in the front yard or side yard of a residential property. Ground mounted solar energy equipment may be located in the rear yard of a residential property, but shall not be located within the rear yard setback. The ground mounted solar energy equipment shall not exceed thirty-five (35%) of the total area of the rear yard. The ground mounted solar energy equipment located in the rear yard shall be adequately screened by vegetation or a fence, and shall be installed in compliance with the applicable building code. Zoning permits for solar energy equipment which fully comply with the requirements of this Ordinance may be issued by the Zoning Enforcement Officer. Law Director Stephan stated Member Garber, at the last Council Meeting, raised an issue about the size of the vegetation or fence, or the interpretation of the word adequate. We will certainly discuss that issue with Planning Commission. Law Director Stephan commented we currently have a fence requirement up to six feet, so we could require a fence that would be at least as high as the equipment, but not to exceed six feet to address that concern.

Member Garber stated what he thinks is adequate could be different for someone else.

Motion by Duncan, second by Cantrell to close the Public Hearing. All yeas, motion carried.

Police Chief Preston presented the Call Analysis Report for July 2009. The report shows 127 Priority 1 calls, 345 Priority 2 calls and 188 Priority 3 calls. Total calls handled from January 1 through July 31 shows a decrease of 583 calls or 12.7% from the previous year. Total reportable incidents are also down 34 reports or 7.9% compared to this same time last year. The Incident Log from August 4 through August 17, 2009 shows there were 31 new cases during this time period with 28 closed and three pending further investigation.

Police Chief Preston reported the Brookville Police Department will be holding a regional training program at the Christina Leiber Center at Golden Gate Park tomorrow.

Police Chief Preston reported letters were sent out to the residents of Pleasant Plain Road explaining how the decibel sound from the beeping noise they hear from Payless cannot be turned down.

Law Director Stephan had no report.

Finance Director/Clerk Keaton reported Council should have two packets of information she found on a Prescription Discount Card Program offered through the National League of Cities. Finance Director/Clerk Keaton reported in reviewing the information and searching on CVS's website, she found that CVS currently offers the same prescription discount program as the National League of Cities offers, but at no cost to the City or residents. The program is called "RxSavingsPlus". This program offers a prescription discount card for people who do not have insurance or take medications that are not covered by their insurance plan. This is a nationwide program that has been in place since 1992. There is no enrollment fee or membership fee. This prescription card is accepted at more than 59,000 participating pharmacies nationwide. Finance Director/Clerk Keaton stated in searching for participating pharmacies, she found Rite Aid and Mr. Prescription in Brookville both participating, along with numerous other pharmacies in surrounding communities.

Finance Director/Clerk Keaton reported Council should have a copy of a letter from Time Warner Cable announcing their new channel lineup and programming changes that will take place later this month.

Finance Director/Clerk Keaton announced the Brookville Chamber of Commerce will be holding their General Meeting this Thursday, at Golden Gate Park at noon and stated Council is invited to attend.

Finance Director/Clerk Keaton requested an Executive Session on a Contract Negotiation Matter.

Vice Mayor Ullery reported recently he has been approached by several contractors offering to do repair work. Vice Mayor Ullery stated everyone who is approached by such an individual without initiating the call should check for references and make sure they have insurance.

Planning Commission Chairperson Watkins reported Planning Commission will be holding a Public Hearing at their Regular Meeting on Thursday.

There was no Old Business.

In New Business, Member Duncan reported he distributed copies of a letter from John Wysong that indicated Brookville Council should consider installing curbs along three streets in Brookville.

Member Duncan commented he noticed in the Park Board Minutes that there is going to be an all-night softball tournament and expressed concern for noise the neighbors may hear.

Manager Wright stated we have had all-night tournaments in the past and it has not bothered anyone.

Motion by Duncan, second by Garber to go into Executive Session on a Real Estate Matter as requested by Manager Wright and a Contract Negotiation Matter as requested by Finance Director/Clerk Keaton. All yeas, motion carried.

Vice Mayor Ullery called Council back into Regular Session

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

Sonja M. Keaton, Clerk

Ron Ullery, Vice Mayor