

# FINDLAY CITY COUNCIL MINUTES

**REGULAR SESSION**

**FEBRUARY 16, 2016**

**COUNCIL CHAMBERS**

**PRESENT:** Frische, Harrington, Hellmann, Klein, Monday, Niemeyer, Russel, Shindledecker, Watson, Wobser

**ABSENT:** none.

President J Slough opened the meeting with the Pledge of Allegiance and a moment of silent prayer.

## **ACCEPTANCE OR CHANGES OF MINUTES AND PUBLIC HEARINGS:**

Councilman Niemeyer moved to accept or changes to the February 2, 2016 Regular Session City Council meeting minutes. Councilman Harrington seconded the motion. All were in favor. Motion carried. Filed.

## **ADD-ON/REPLACEMENT/REMOVAL FROM THE AGENDA:**

Councilman Monday moved to replace the following on tonight's agenda. Councilwoman Frische seconded the motion. All were in favor. Motion carried. Filed.

### **REPLACEMENTS:**

- Ordinance No. 2016-017 (**LEGISLATION** section).  
Changed first bullet point in SECTION 2 to now read:  
- Tap fees waived if legally connected by December 31, 2016

**PROCLAMATIONS:** - none.

**RECOGNITION/RETIREMENT RESOLUTIONS:** - none.

**PROCLAMATIONS:** - none.

**PETITIONS:** - none.

## **WRITTEN COMMUNICATIONS:**

### **Blanchard River Watershed Partnership President Theresa Allen – offering a place on our Board of Directors**

At the Blanchard River Watershed Partnership's (BRWP) November 2015 annual meeting, it was voted on to increase their Board of Directors by six (6) places. These six (6) places will be members who are appointed to the board and will have voting privileges. The BRWP would like to offer the City of Findlay Council one (1) spot on their Board. The Board of Directors met the first Tuesday of each month from 6:00-8:00pm. Enclosed is a document outlining the job of a Board member. The BRWP has made great strides in preserving the water quality in Findlay and the six (6) counties of the Blanchard River watershed. The strength of the partnership continues to be the participation with the communities, various agencies, non-profit groups and citizens all working towards improved water quality.

Councilman Monday moved to appoint Councilman Russel to this Board. Seconded by Councilman Klein. All were in favor. Motion carried. Filed.

### **Blanchard River Watershed Partnership President Theresa Allen – BRWP support extension for grant**

The City of Findlay has been a valuable supporter of the Blanchard River Watershed Partnership (BRWP) for the past five (5) years. One (1) major problem the BRWP has fought is the continuing need for grants to fund the coordinator's position. The BRWP has a chance to apply for a grant that would fund the coordinator's position. The BRWP has a chance to apply for a grant that would fund the coordinator's position for the next four (4) starting August 1, 2016. The present City of Findlay's commitment for matching grant funds for the Blanchard River Watershed Partnership ends in 2017. We are asking that the City of Findlay renew the \$5,000 per year commitment for another three (3) years (2018-2020) in order to help provide matching funds for the grant being sought. Please place the BRWP on the Appropriations Committee's agenda at your March meeting. The BRWP has made great strides in preserving the water quality in Findlay and the six (6) counties of the Blanchard River watershed. The strength of the partnership continues to be the participation with the communities, various agencies, non-profit groups and citizens all working towards improved water quality. Referred to the Appropriations Committee. Filed.

### **Findlay Shade Tree Commission Chair Thomas Mills – request a meeting with City Council**

Over the last twelve (12) months, the Tree Commission has been revising the Tree Ordinance and developing Tree Planting Rules to be reflective of current practices and future needs city-wide. The Shade Tree Commission is inviting City Council to attend the Tree Commission meeting on Monday, March 7, 2016 at 4:00pm in the third (3<sup>rd</sup>) floor conference room of the Municipal Building to review the changes and discuss their impact. Copies of these documents will be forwarded to Council prior to the March 7<sup>th</sup> meeting. Following Council's input, the Shade Tree Commission will provide the revised ordinance for City Council's March 15, 2016 meeting for potential approval/adoption. Their 2015 Annual Report is included in tonight's packet. It represents good news due to the Shade Tree commission having a very productive year. More good news was also received indicating that Findlay has been recertified as a Tree City USA Community by the National Arbor Day Foundation. That award will be presented on April 20, 2016 in West Unity Ohio by the Ohio Department of Natural Resources Division of Forestry. Filed.

**ORAL COMMUNICATIONS:** - none.

## REPORTS OF MUNICIPAL OFFICERS AND MUNICIPAL DEPARTMENTS:

City Income Tax Monthly Collection Report – January 2016. Filed.

Findlay Police Department Activities Report – January 2016. Filed.

Findlay Municipal Court Activities Report – January 2016. Filed.

### City Auditor Jim Staschiak – summary financial reports

A set of summary financial reports for the prior month follows including:

- Summary of Year-To-Date Information as of January 31, 2016
- Cash & Investments as of January 31, 2016
- Open Projects Report as of January 31, 2016
- Financial Snapshot for General Fund as January 31, 2016

Filed.

### Clerk of Council Denise DeVore – funds for 2015 Codified Ordinance updates

When I estimated what budget amount was needed for 2015 Codified Ordinance updates, it was unknown exactly how much would be needed. The estimate I just received is more than what was budgeted for. An additional \$1,378.00 is needed to pay the invoice.

Walter Drane Company provides the City with both online and also printed sets for binders that are housed in various City departments as well as the Traffic/General Offenses Codes that are housed in the Police Department/Police cruisers.

At this time, the amount of one thousand three hundred seventy-eight dollars and no cents (\$1,378.00) is being requested to be appropriated from the General Fund to the Council Department 21001000-other via Ordinance No. 2016-016). Ordinance No. 2016-015 was created. Filed.

Findlay W.O.R.C. Financial Analysis Report – January 1, 2016 through January 31, 2016. Filed.

Findlay Fire Department Activities Report – January 2016. Filed.

### Findlay Fire Department Chief Josh Eberle – Vanguard Fire & Supply Co., Inc. Donation

The Findlay Fire Department would like to thank Vanguard Fire & Supply Co., Inc. for their donation of \$500.00 to the Findlay Fire Department. A request to reallocate this donation from the General Fund to the Fire Department training line item #448101 to assist with future Firefighter training opportunities is requested. Ordinance No. 2016-016 was created. Filed.

N.E.A.T. Departmental Activity Report – January 2016. Filed.

Parks and Recreation Board minutes January 19, 2016. Filed.

Findlay Shade Tree Commission – 2015 annual report. Filed.

City Planning Commission minutes – January 14, 2016. Filed.

### City Engineer Brian Thomas – Davis St pavement and resurfacing project no. 32865300

The University of Findlay is planning to add a Center for Student Life and College of Business building to their campus. The area where this new building will be located is currently in need of resurfacing and curb replacement. After the building construction and site work is completed, the University has agreed to contract and construct the pavement improvements with reimbursement from the City. Referred to the Appropriations Committee.

FROM:	Capital Improvements – CIT	\$ 235,000.00
TO:	Davis Street Resurfacing Project #32865300	\$ 235,000.00

Filed.

Officer/Shareholders Disclosure Form from the Ohio Department of Commerce Division of Liquor Control for C&D Brew U Sports Pub dba Brew U Sports Pub, located at 316 North Main Street, 1<sup>st</sup> Floor and Patio, Findlay, Ohio for a D1, D3, D3A, D3X liquor permits. This requires a vote of Council.

Gregory R. Home, Chief of Police – C&D Brew U Sports Pub dba Brew U Sports Pub, located at 316 North Main Street, 1<sup>st</sup> Floor and Patio, Findlay, Ohio. A check of the records shows no criminal record on the following:

Darrin N. Karcher  
Cierra N. Karcher

Councilman Harrington moved for no objections be filed. Seconded by Councilman Klein. 9 Councilmembers in favor, 1 opposed. Filed.

**City Auditor Jim Staschiak – Ohio Safe Kids and MRC grants**

From time to time, the City Auditor’s Office will have cleanup items from the merger of the City Health Department with the County. Currently, Ohio Safe Kids and MRC grants needs reimbursed. The amounts being reimbursed are significantly larger than this, therefore, the City Auditor is requesting the emergency clause be added to the legislation so that the funds can be distributed expeditiously. Legislation to appropriate funds is requested. Ordinance No. 2016-021 was created.

FROM: Ohio Safe Kids Contributions	\$ 165.00
TO: Ohio Safe Kids #31924200	\$ 165.00
FROM: MRC Grant Project Contributions	\$ 100.00
TO: MRC Grant Project #31992400	\$ 100.00

**Discussion:**

Councilman Harrington asked for clarification on the last sentence of this letter where it states the amounts being reimbursed are significantly larger than this. City Auditor Staschiak replied that according to the Ohio Statutory Law, we cannot reimburse what is not appropriated. The amounts he is reimbursing are in excess of thirty-one thousand dollars (\$31,000) on one of them, and thirty-six thousand dollars (\$36,000) on the other, with a total amount that equals what is in the account from closing the year. The amount was not known until after they closed the year. By Council appropriating these minor amounts, it allows him to reimburse the entire amount on both of these. There will be at least two (2) others coming up in the near future. Filed.

**Board of Zoning Appeals Minutes – December 10, 2015. Filed.**

**Mayor Lydia Mihalik – appointments to various Boards or Commissions**

Mayor Mihalik is requesting the following appointments to the following Boards or Commissions:

Councilman Harrington requested the letter be read in full. The Council Clerk read the letter in its entirety.

Hancock Regional Planning Commission Board – requires Council confirmation

Bret Gies  
Dennis McPheron  
Terms to expire December 31, 2017

Paul Craun (filling an unexpired term)  
Term will expire on December 31, 2016

Councilman Klein moved to accept this appointment. Councilman Harrington seconded the motion. All were in favor of this appointment.

Revolving Loan Fund – requires Council confirmation

Chris Alexander  
Paul Craun  
Donald Bledsoe  
Jim Ferguson  
Term to expire on December 31, 2017

Councilman Klein moved to accept this appointment. Councilman Shindledecker seconded the motion. All were in favor of this appointment.

**COMMITTEE REPORTS:**

The **WATER AND SEWER COMMITTEE** to whom was referred a request from the Service-Safety Director to discuss tap fees for the West Park Sanitary Sewer Project.

*We recommend if the property owner taps by 12/31/16, the tap fee is waived. If the property owner fails to tap by 12/31/16, they will be assessed as follows over six (6) years:*

*\$100/year (\$600/6 years)*

*Applied as follows:*

<i>Impact \$270/6 = \$46.39</i>	} \$100/year
<i>Capacity \$242/6 = \$41.58</i>	
<i>General \$70/6 = \$12.03</i>	

*The exception is recommended because of CDBG rules.*

Ordinance No. 2016-017 was created.

Councilman Monday moved to adopt the committee report. Councilwoman Frische seconded the motion. All were in favor. Filed.

The **WATER AND SEWER COMMITTEE** to whom was referred a request to discuss the Davis Street (University of Findlay) Waterline Project. *We recommend to appropriate \$172,000 to the project for Davis Street waterline for an eight inch (8") line construction to reimburse the University of Findlay. Ordinance No. 2016-018 was created.*

Councilman Harrington moved to adopt the committee report. Councilwoman Frische seconded the motion. All were in favor. Filed.

The **PLANNING & ZONING COMMITTEE** to whom was referred a request from Philip Rooney, Rooney & Ranzau on behalf of Catherine Mutchler, to rezone 133 Hillcrest Avenue from O1 Institutions and Offices to R1 Single Family Low Density. *We recommend to rezone to R2 Single Family in accordance with the City Planning Commission's recommendation. Ordinance No. 2016-019 was created.*

Councilman Shindledecker moved to adopt the committee report. Councilman Harrington seconded the motion.

**Discussion:**

Councilman Russel pointed out that there was much discussion on this case. Council heard a case about this property about a year and a half to two (1 ½ -2) years ago where it went against a City Planning Commission's recommendation on a rezoning. The Planning & Zoning Committee had a lot of discussion during this recent meeting on the parking spaces between the sidewalk and street that was used for parking for this dentist office. At some point the curbs were removed and this area was blacktopped. Discussions included whether or not to ask the applicant to replace the curbs and remove the parking surface. Because the single family zoning was something the neighborhood was in favor of at that time of the previous case, it was in the best interest to recommend the rezone without any of the other issues/conditions, and also because it would be very difficult to put those conditions on a rezone request.

All were in favor. Filed.

The **PLANNING & ZONING COMMITTEE** to whom was referred a request from Van Horn, Hoover and Associates, Inc. on behalf of Marathon Petroleum Company, LP, to vacate the east 18.8 feet of South Main Street from East Lincoln Street to a point 267' north of East Lincoln Street to the City of Findlay, in the Byals and Byals 2<sup>nd</sup> Addition. *We recommend the denial of the right-of-way vacation requested and recommend the approval of an encroachment permit for the above-mentioned property in accordance with the approved site plan.*

Councilman Shindledecker moved to adopt the committee report. Councilman Harrington seconded the motion.

**Discussion:**

Councilwoman Frische asked what the difference between a vacation and an encroachment is and what the City's responsibility for them would be. Mayor Mihalik explained that if the City were to vacate the property in total, which was what the original request was, the City would be giving up any ability to occupy that right-of-way, so the City would be giving up the right-of-way. An encroachment permit allows them to be there, but it is still the City's. Councilwoman Frische then asked whose responsibility it would be to maintain it. Mayor Mihalik replied that the encroachment only goes to a point and does not necessarily go beyond the curb area. She asked Don Malarky (Marathon Petroleum Company) from the audience to provide more information. MPC initially filed with the Planning Commission for an encroachment permit. During that process, the Planning Commission suggested they look into a vacation instead of an encroachment. After additional contemplation, they went back to the Planning Commission who changed their mind and asked them to do the encroachment. A vacation gives up the property and the rights. An encroachment, would allow them to construct in a particular area. The maintenance of the area of the encroachment would be part of the permit conditions (i.e. Marathon would provide access for sidewalk and parking per the conditions of the permit). Mayor Mihalik added that the City is trying to accommodate by allowing pillars that will support the overhang (i.e. arcade) for the hotel.

Councilwoman Frische asked if this will affect any parking spaces on the street for public use. Mr. Malarky replied it does not have any impact on the encroachment. It is a separate matter. Councilwoman Frische then asked if an encroachment is granted, if there is any liability to the City if an accident were to happen in the encroached area. Law Director Rasmussen replied the City would not be giving up ownership and losing control of the area if an encroachment is granted. Councilwoman Frische then asked if the City would still have a liability. Law Director Rasmussen replied there is a liability attached to any right-of-way which is why the sidewalk design is important. It is an encroachment where the permit will allow us to put regulations on it. Basically, the City would be accepting it into our right-of-way. This is similar to what was done with landscape trees that was done in the right-of-way that they would have to maintain including any damage to the area.

Mayor Mihalik added that there are several areas downtown that do not encroach into the right-of-way that the City permits, so this isn't the first time the City is allowing an exception like this. Mr. Malarky added that the other reason why Marathon originally applied for an encroachment permit instead of a vacation is because if something were to happen (i.e. they would sell the property to another owner where they wanted to do something with it), they would own the ground at that point. They could do whatever they wanted within what the zoning laws would allow them to do. This allows the City to maintain its rights/use of the property as long as Marathon complies with the terms of the permit conditions. Mayor Mihalik added that this is a much more favorable action from the Planning Commission.

Councilman Monday asked if this is similar to what some of the downtown restaurants have done by using the sidewalk for a dining area in that they do not own it but are using it with the City's authority. Mayor Mihalik replied it is similar but with a different type of structure. It is not temporary and allows them to do what they need to do and helps us maintain some flexibility in maintaining the right-of-way. Councilwoman Frische then asked if the only reason this went to the P&Z Committee was because it went from a vacation request to an encroachment request and if other businesses that have obtained an encroachment came before City Council because they asked for an encroachment and did not ask for a vacation first. Law Director Rasmussen replied it depended on what type of encroachment they wanted. For instance, the sidewalk cafés are by a permit. They are not an encroachment permit. They do not have anything permanent in the City's right-of-way. Mayor Mihalik added that he Niswander clock is an encroachment. Law Director Rasmussen added that an encroachment was also done for the Ohio Bank's clock and the downtown wayfinding signs. When the encroachment requests were accepted on them, rules were provided (i.e. they would repair the signs, keep them up to date, maintain them, etc.).

Councilman Harrington pointed out that Marathon is proposing a drop off area in the encroachment area for guests to be under a structure held up by pillars that would allow them to get out of the weather. These structures are popular in bigger cities like Columbus, Cleveland, and Cincinnati when you pull into finer hotels.

Councilman Russel is recusing himself from this issue because he is employed by Marathon. Councilman Wobser also recused himself from this for the same reason.

Councilman Shindledecker noted that Mr. Malarky already mentioned what he was going to suggest about the encroachment giving the City control of the area. For instance, if Marathon later decides they need the space for office instead of a hotel and the canopy was no longer needed and could be removed, the City would have control of the property. If someone were to decide to buy the property, and put something else there, the City would still control the property. All were in favor. Filed.

The **PLANNING & ZONING COMMITTEE** to whom was referred a request from Levi Schlumbohm to rezone Lot Number 1010, Parcel 600000317710 on North Cory Street from R3 Single Family High Density to R4 Duplex Triplex High Density. *We recommend approval as requested. Ordinance No. 2016-020 was created.*

Councilman Harrington moved to adopt the committee report. Councilman Hellmann seconded the motion. All were in favor. Filed.

**LEGISLATION:  
RESOLUTIONS**

**RESOLUTION NO. 011-2016** (Main St/Cory St revitalization project)

**second reading**

A RESOLUTION AUTHORIZING THE SERVICE-SAFETY DIRECTOR OF THE CITY OF FINDLAY TO ENTER INTO AN AGREEMENT OR AGREEMENTS WITH THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) AUTHORIZING THE USE OF TRANSPORTATION ALTERNATING PLAN (TAP) FUNDS FOR THE DOWNTOWN REVITALIZATION PID98797 - PROJECT NO. 31942400, AND DECLARING AN EMERGENCY.

Second reading of the Resolution.

**RESOLUTION NO. 012-2016** (no PO)

**first reading**

**adopted**

A RESOLUTION APPROVING THE EXPENDITURES MADE BY THE AUDITORS OFFICE ON THE ATTACHED LIST OF VOUCHERS WHICH EITHER EXCEED THE PURCHASE ORDER OR WERE INCURRED WITHOUT A PURCHASE ORDER EXCEEDING THE STATUTORY LIMIT OF THREE THOUSAND DOLLARS (\$3000.00) ALL IN ACCORDANCE WITH OHIO REVISED CODE 5705.41(D).

Councilman Harrington moved to adopt the Resolution, seconded by Councilman Russel. Ayes: Frische, Harrington, Hellmann, Klein, Monday, Niemeyer, Russel, Shindedecker, Watson, Wobser. The Resolution was declared adopted and is recorded in Resolution Volume XXXIII, and is hereby made a part of the record.

**ORDINANCES**

**ORDINANCE NO. 2016-006** (former Fire Chief severance payout)

**third reading**

**adopted**

AN ORDINANCE APPROPRIATING FUNDS AND DECLARING AN EMERGENCY.

Councilman Klein moved to adopt the Ordinance, seconded by Councilman Monday.

**Discussion:**

Councilwoman Frische explained what happened with this last year. It passed with an 8-2 vote, however, former Fire Chief Lonyo did not want his payment until 2016 which is why this ordinance is up for vote tonight. There are three (3) new Councilmembers who are not up to speed on this matter, and there was discussion at the previous Council meeting that those three (3) may choose to abstain which might be the right thing to do or best thing to do since they are not fully aware of all the discussion over the last eight to ten (8-10) months. She recapped some of the notes she had so if those Councilmember decide to not abstain and vote, they will have a little information. Mr. Lonyo was not eligible, so there was eight plus (8+) months of discussion that ended with side negotiations for half of what he thought he was owed. First, they had to decide if he was entitled to a sick time payment. Mr. Lonyo resigned on November 18, 2014. While he was on vacation, he continued to work until the first of the year. During the eight to ten (8-10) months of discussion, there were several ideas on how and why the City should pay Mr. Lonyo. The definition of retirement is clearly stated in Ordinance No. 2013-062 as being immediately eligible to receive retirement benefits from an employer's pension plan. The Law Director submitted to Council his legal opinion and in that letter, he cited the Metzger vs. the State case from 1994 and said it is different because the letter said he resigned and not that he retired. He felt that this case was about the definition of retirement in his legal opinion. Council then waited for a letter from the State similar to Officer Wapplehorse's who retired from the force in 2010. That letter did not come in favor of Mr. Lonyo stating that he was eligible to start collecting benefits which was what our ordinance read and required. The letter from OP&F was dated February 19, 2015 and clearly showed that Mr. Lonyo was not eligible to immediately receive benefits because the letter told him to reapply forty-five (45) days prior to turning forth-eight (48) years of age. The Law Director and the Administration compared Mr. Lonyo's retirement to a Union Police Officer retirement benefits which has different rules. The key word there was "union". The Fire Chief position is not protected by the union. Council was told that this ordinance was not legal and did not reference the sick pay ordinance, however, it was reviewed under the Administration and Law Director and passed by Council in 2013 as being legal. After that discussion, it switched to side negotiations because it could possibly save the City money of a court case. At a recent Council meeting this year, Council was told that there is a contract and must pass this ordinance, however, it was clarified at that Council meeting that there is only a verbal agreement, nothing more. A verbal agreement is not a contract. The negotiation ordinance that is presented tonight is for approximately half of the \$65,000 Mr. Lonyo claimed he was due. If Mr. Lonyo was truly due the \$65,000, and you were in his shoes, would you settle for half. With all this being said, last night before going to bed, she saw her Oath of Office sitting in the kitchen and read it. In that oath, she swore to uphold the Constitution and all state and city ordinances, but nowhere in her oath does it give her the right to do side negotiations. Councilman Harrington brought up over the eight plus (8+) months discussion that this has to pass the state test. Councilwoman Frische will be voting no again tonight. If Mr. Lonyo feels he is in the right, she fully supports him taking the proper channels through the legal system to hash this out because it is not in her oath to side negotiate. For the record, if she was honestly owed sixty-five thousand dollars (\$65,000), she would not settle for half.

Councilman Monday feels the negotiation issue has been beat to death. It is insinuated that he negotiated with Mr. Lonyo because that is what Councilwoman Frische has said in the past, but did not under any circumstances negotiate anything with Mr. Lonyo. It is an absolute untruth. He went to Mr. Lonyo at the request of two (2) other Councilmembers, and as the Chairman of the Appropriations Committee, and asked him what is the least amount he would take to which he gave him a figure that was reported back to the Appropriations Committee as he was asked to do. The amount given by Mr. Lonyo was the \$32,374.64 that is in this ordinance. Councilman Monday was a little undecided throughout the last year, so several Councilmembers asked the Law Director if he would provide a written opinion to which he agreed to do so. In that opinion, Mr. Lonyo legally retired and is entitled to the severance pay. Auditor Staschiak did his due diligence and contacted the State Auditor's Office, David Yost, and asked about the sick time accrual payment to a Fire Chief leaving the position with the City of Findlay where it is assumed he provided the written opinion from our City Law Director to the State Auditor's Office. Councilman Monday read the reply our City Auditor received from Maxwell Gerwin, Assistant Legal Counsel of the State Auditor's Office:

Thank you for contacting our office. While we are not authorized to provide legal advice to you on this issue, we are able to evaluate issues presented to us in the context of an audit. Based on the facts you have provided, our office would not take issue with the City of Findlay following the legal advice of its Director of Law and paying the accrued sick time to the Fire Chief at his retirement. While our office cannot opine on the legality of your decision, we do not typically issue a financial recovery for actions taken by a subdivision acting in accordance with a well-reasoned legal opinion of the legal counsel. In the present case, the City of Findlay has a well-reasoned legal opinion supporting a specific interpretation of the word retirement in the City of Findlay's local ordinance, and there does not appear to be sufficient legal authority to conflict with the Director of Law's opinions of what our office issuing a finding of recovery for funds spent in accordance with his legal opinion provided.

Councilman Monday then summarized how he interpreted the State Auditor's letter that he just read and what events led up to this Ordinance. Law Director Rasmussen made a legal opinion, and as he just read the State Auditor's letter verbatim, it seems that the Auditor of the State of Ohio is agreeing with the opinion of our Law Director, and if there is a disagreement, there would be no finding for recovery. He thanked the City Auditor for his due diligence in this matter when he asked the State Auditor for his opinion. He feels it required it. Councilman Monday agrees with Councilman Frische that our Law Director made an opinion that was approved by the State Auditor, and Councilman Monday also took the same oath that Councilwoman Frische cited. He also will support the Constitution of the State of Ohio, and the Ordinances of the City of Findlay. This Ordinance before Council tonight has been approved by not only the City's legal advisor whom Council relies on for legal advice, but also the State Auditor's David Yost's Office also agrees with it. He feels Council has no choice in this matter, but to pay it. If he hires a lawyer, he is going to do what his lawyer says. He will be voting in the affirmative to pay this and go on with other matters.

Councilman Wobser noted that when this first was put on the agenda, the Law Director explained what an abstaining vote would mean. He asked if he was correct in how he understood what abstaining meant. He asked if someone abstains from the vote, how the majority is calculated. He asked if it is calculated by the number of votes cast or the number of votes present. Law Director Rasmussen replied that all Council votes are based on total membership. So, if a Councilmember abstains, it is a no vote, not a "no" or "nay" vote. It would require six (6) aye votes for passage, and seven (7) for passage on an emergency. Councilman Wobser then asked if it would be the same scenario if a Councilmember was not here to vote. He asked if their vote would or would not count in that case. Law Director Rasmussen replied that if a Councilmember is not present, he/she is still a member. As long as he/she is a member in standing, it is always out of the whole body. Councilman Wobser then asked if it is still based on the ten (10) total Councilmembers. Law Director Rasmussen replied that is correct. Majority being six (6).

Councilman Shindledecker asked if he is understanding correctly that if this were to pass with a six (6) to four (4) vote, then it would not pass as an emergency and then would be subject to a referendum. Law Director Rasmussen replied if it passed with a seven (7) to three (3) vote, it is passed on an emergency. If it is passed with a six (6) to four (4) vote, it is passed but not on an emergency. It has to be a 2/3 vote. Councilman Shindledecker understood it to be a 3/4 vote. Law Director replied that is not correct, it is a 2/3 vote.

Councilwoman Frische asked if the legislation has the emergency clause. Law Director Rasmussen replied it currently contains an emergency clause.

City Auditor Staschiak clarified the email from the State Auditor's Office for the benefit of the new Councilmembers. He would not speak for their office except for in the context of the conversation he had with them, so that the record is clear. His email request with Mr. Gerwin was specifically to ask if Council did pass this ordinance and his office did pay it, because of the concerns he had, would there be a finding for recovery against him, and by inference, the City. We cannot infer properly from that email that the Auditor's Office did review the legal opinion. What the Auditor's Office told him was that they would not comment if it would be legal to pay or not pay which is in the letter. What they did say was that in the presence of a legal opinion, which we have and is part of his due diligence and part of the Law Director's job, that offers some protection for his office in that he did not just make a payment without grounds for a payment. There was another elected official with the authority to give an opinion which states they are okay with him making that payment. There is no way to his knowledge during the short conversation he had with Mr. Gerwin (he was leaving the job the next day and went over and above to give him his opinion), that he could have fully researched and given a full opinion on what we are looking at. His question was strictly in the context of a finding for recovery for the City. Law Director Rasmussen replied that nor would he have been authorized to lend a legal opinion of any type to the City of Findlay.

Councilman Klein asked the Law Director if he has had any change of opinion since his opinion came out some time ago. Law Director Rasmussen replied he has not changed his opinion. In fact, during the committee meetings, he attempted to create what he thought Councilwoman Frische wanted to have it read as, but it just didn't happen. His opinion has not changed. He stands by his four (4) page legal opinion.

Councilman Wobser asked for clarification on what City Auditor Staschiak had said. The Auditor's report in this situation has nothing to do with the legality if this should be passed or not by Council. It was just simply talking about the fact that if we pay it out, we are not subject to any further legal ramifications. City Auditor Staschiak replied that the question to the Auditor in the follow-up writing was not as detailed as the verbal question. The question was if he made that payment based on the circumstances at the time, would we be subject to a finding for recovery. The answer verbally and in writing was based on the fact that there was an opinion, so they would not comment on the legality of the opinion, but that opinion alleviated his office and him from a finding for recovery which is very important from his position because Finance Officers in the State of Ohio are personally liable for the finances of the City. Councilman Wobser added that the State Auditor's report or opinion has nothing to do with the legality of this ordinance.

Councilman Hellmann asked if this establishes a precedent in the future and if Council will find themselves in this predicament again. Law Director Rasmussen replied that it is completely changed now because the term of retirement has been adopted as the retirement definition in the State of Ohio which is service retirement with four (4) different types of service retirement of which Mr. Lonyo took advantage of one type of service retirement. The problem was the definition of retirement that we previously had because that would have prevented us from paying any sick time to employees who left after ten (10) years which is mandated by the State. That definition didn't work. They should have put that definition for anything over and above the ten (10) years or no for retirement and had a different definition for retirement. That is what we tried to do in that committee. We tried to talk about what our requirements are under the State Code for the first ten (10) years or death after ten (10) years of paying on a quarter (1/4) of nine hundred sixty (960) hours of accumulated but unused sick leave. Council can eliminate or increase the balance. Council increased it a long time ago, not in 2013, but way back. If Council wants to put a different standard for what it is after that initial nine hundred sixty (960), they can do so. We tried to make it normal retirement, but Councilwoman Frische did not agree with it. Normal retirement requires an employee to have both age and service which is what the committee tried to establish.

Councilwoman Frische noted that the sick pay ordinance originally stated that an employee had to be immediately eligible to collect retirement benefits from their pension. In order to do so, an employee had to meet the number of years of service and an age requirement depending on what type of service retirement the employee is taking or disability. Mr. Lonyo did not meet that requirement. Had he met that requirement, this discussion would not have taken place the last eight to ten (8-10) months because he would have been paid and Council would have moved on. During the whole discussion, when the scenarios kept changing on why we should pay Mr. Lonyo out, the last one was that Council was waiting for a letter from the State of Ohio from OP&F where it was expected that they would claim he was eligible to receive benefits. That letter did not come. The letter that came, which she has with her, states that he should reapply forty-five (45) days prior to his forty-eighth (48<sup>th</sup>) birthday. He was not immediately eligible which is why that got dropped and is why side negotiations took place and is why this ordinance is for half of what Mr. Lonyo told Councilman Monday he would be willing to accept. By Council accepting that, we are negotiating. She does not disagree with the Law Director that Council is to look to him for answers, but there is a legal system and there is a process that needs to be followed. There is money in a fund to be able to follow that legal process with anything that comes to the City, so this should be no different. An Ad Hoc Committee consisting of Councilwoman Frische, Councilman Harrington, and Councilman Shindledecker was formed to discuss the sick pay ordinance. The first committee meeting, which included Councilman Harrington stomping out and not

being a part of the discussion, Councilman Shindledecker, Law Director Rasmussen and Councilwoman Frische finished the meeting but did not get very far and were not able to make a recommendation. The second meeting was scheduled by Councilman Shindledecker and Law Director Rasmussen when she was unable to attend, and a recommendation to Council was made. The goal for this Ad Hoc Committee was to define what retirement meant. It was changed to define what retirement, service retirement, and disability mean under any state or municipal retirement system in the state.

Councilman Harrington clarified that the word fishy was used a couple of times which referred to the initial meeting when it was announced that Mr. Lonyo had left and he used his business sense and felt that since then, our Law Director provided a legal opinion. Don Rasmussen is the lawyer for the City of Findlay, so he considers him his lawyer as a City Councilman, and he is taking his recommendation. He explained why he stomped out of the Ad Hoc meeting that he had been accused of leaving in a huff. It was a meeting that seemed very redundant. Discussion was on matters that had already been discussed and had already been decided, and Councilwoman Frische seemed to be intent on bringing those issues up again and again that day. He also did not feel well at that time. He later apologized for leaving. It was not preplanned to schedule a meeting for when Councilwoman Frische could not be there. He apologized that Councilwoman Frische could not be there. Councilwoman Frische's criticisms were unwarranted and needed to be addressed.

Councilman Wobser will abstain during the vote on this because Council negotiated with Mr. Lonyo to come to this conclusion. He appreciates Councilman Monday's viewpoint that he does not feel it was a negotiation, but he disagrees. Since he was not a part of that negotiation, he is abstaining from voting on this.

Councilman Monday reiterated what the attorney that represents the Auditor of the State of Ohio said. In the present case, the City of Findlay has a well-reasoned legal opinion supporting a specific interpretation of the word retirement in the City of Findlay local ordinance, and there does not appear to be sufficient legal authority and conflict with the Director of Law's opinion. That was quoted from Maxwell Gerwin, legal representative for the Auditor of the State of Ohio.

Councilman Harrington called the question.

Ayes: Harrington, Hellmann, Klein, Monday, Russel, Shindledecker, Abstain: Watson, Wobser. Nays: Niemeyer, Frische. The Ordinance was declared adopted and is recorded in Ordinance volume VV, Page 2016-006 and is hereby made a part of the record.

Councilwoman Frische asked if this passes due to it only receiving six (6) aye votes. Law Director Rasmussen replied it passes non-emergency. Councilwoman Frische then asked if that is still the case with four (4) no votes. Law Director Rasmussen replied with six (6) aye votes, that is still the majority, so it passes the ordinance not on an emergency, so it does not go into effect immediately. Councilwoman Frische then noted that there is an emergency clause on the ordinance. Law Director Rasmussen replied it does not matter if an emergency clause is on legislation or not. It still passes, just does not go into effect until thirty (30) days after it is adopted. Councilwoman Frische then asked where the 2/3 vote on this falls. Law Director replied that to pass it by emergency which means the Mayor could sign today, it would have to be passed by 2/3 vote. If it passed by a majority, it does not go into effect for thirty (30) days.

**ORDINANCE NO. 2016-007 AS AMENDED** (*amendment to salary ordinance no 2015-100*) **third reading** **tabled**  
AN ORDINANCE AMENDING CERTAIN PROVISIONS OF CODIFIED ORDINANCE NO. 2015-100 OF THE CITY OF FINDLAY, OHIO  
KNOWN AS THE SALARY ORDINANCE.

Councilman Watson moved to table the Ordinance, seconded by Councilman Klein. All were in favor. The Ordinance is tabled.

**ORDINANCE NO. 2016-008** (*College St/U of F vacation*) **third reading** **adopted**  
AN ORDINANCE VACATING A CERTAIN ALLEY (HEREINAFTER REFERED TO AS (UNIVERSITY OF FINDLAY COLLEGE STREET  
VACATION) IN THE CITY OF FINDLAY, OHIO.

Councilman Russel moved to adopt the Ordinance, seconded by Councilman Harrington. Ayes: Klein, Monday, Niemeyer, Russel, Shindledecker, Watson, Wobser, Frische, Harrington, Hellmann. Ordinance was declared adopted and is recorded in Ordinance Volume VV, Page 2016-008 and is hereby made a part of the record.

**ORDINANCE NO. 2016-015** (*2015 Codified Ordinance updates*) **first reading**  
AN ORDINANCE APPROPRIATING FUNDS AND DECLARING AN EMERGENCY.

First reading of the Ordinance.

**ORDINANCE NO. 2016-016** (*Vanguard Fire & Supply Co., Inc. donation to FFD*) **first reading** **adopted**  
AN ORDINANCE APPROPRIATING FUNDS AND DECLARING AN EMERGENCY.

Councilman Russel moved to suspend the statutory rules and give the Ordinance its second and third readings. Seconded by Councilwoman Frische. Ayes: Monday, Niemeyer, Russel, Shindledecker, Watson, Wobser, Frische, Harrington, Hellmann, Klein. The ordinance received its second and third readings. Councilman Russel moved to adopt the Ordinance, seconded by Councilman Niemeyer. Ayes: Niemeyer, Russel, Shindledecker, Watson, Wobser, Frische, Harrington, Hellmann, Klein, Monday. The Ordinance was declared adopted and is recorded in Ordinance volume XX, Page 2016-016 and is hereby made a part of the record.

**AN ORDINANCE TO ESTABLISH TAP FEES FOR THE WEST PARK SANITARY SEWER PROJECT #35632100, AND DECLARING AN EMERGENCY.**

Councilwoman Frische moved to suspend the statutory rules and give the Ordinance its second and third readings. Seconded by Councilman Russel. Ayes: Russel, Shindledecker, Watson, Wobser, Frische, Harrington, Hellmann, Klein, Monday, Niemeyer. The ordinance received its second and third readings. Councilwoman Frische moved to adopt the Ordinance, seconded by Councilman Harrington. Ayes: Shindledecker, Watson, Wobser, Frische, Harrington, Hellmann, Klein, Monday, Niemeyer, Russel. The Ordinance was declared adopted and is recorded in Ordinance volume XX, Page 2016-017 and is hereby made a part of the record.

**ORDINANCE NO. 2016-018** (*Davis St (U of F) waterline project*)

**AN ORDINANCE APPROPRIATING FUNDS AND DECLARING AN EMERGENCY.**

First reading of the Ordinance.

**ORDINANCE NO. 2016-019** (*133 Hillcrest Ave rezone*)

**AN ORDINANCE AMENDING CHAPTER 1100 ET SEQ OF THE CODIFIED ORDINANCES OF THE CITY OF FINDLAY, OHIO, KNOWN AS THE ZONING CODE BY REZONING THE FOLLOWING DESCRIBED PROPERTY (REFERRED TO AS 133 HILLCREST AVENUE REZONE) WHICH PREVIOUSLY WAS ZONED "O1 INSTITUTIONS AND OFFICES" TO "R2 SINGLE FAMILY LOW DENSITY".**

First reading of the Ordinance.

**ORDINANCE NO. 2016-020** (*N Cory St rezone*)

**AN ORDINANCE AMENDING CHAPTER 1100 ET SEQ OF THE CODIFIED ORDINANCES OF THE CITY OF FINDLAY, OHIO, KNOWN AS THE ZONING CODE BY REZONING THE FOLLOWING DESCRIBED PROPERTY (REFERRED TO AS NORTH CORY STREET REZONE) WHICH PREVIOUSLY WAS ZONED "R3 SINGLE FAMILY HIGH DENSITY" TO "R4 DUPLEX TRIPLEX HIGH DENSITY".**

First reading of the Ordinance.

**ORDINANCE NO. 2016-021** (*Ohio Safe Kids; MRC grants*)

**AN ORDINANCE APPROPRIATING FUNDS AND DECLARING AN EMERGENCY.**

Councilman Monday moved to suspend the statutory rules and give the Ordinance its second and third readings. Seconded by Councilman Klein. Ayes: Watson, Wobser, Frische, Harrington, Hellmann, Klein, Monday, Niemeyer, Russel, Shindledecker. The ordinance received its second and third readings. Councilman Monday moved to adopt the Ordinance, seconded by Councilman Wobser.

**Discussion:**

Councilwoman Frische pointed out the \$165 and \$135 on the ordinance. Looking at the City's Auditor report for that project number, it shows \$3,304. She asked if that is the same project. City Auditor Staschiak replied in these two (2) grants are \$31,100 and \$36,412, one case is \$100 short and the other is \$165 short which will complete the full reimbursement process. The Health Department has so many of these grants that come in, so he can take a look at them, but does not think he will be able to answer her question tonight. Councilwoman Frische then noted that City Auditor Staschiak answered Councilman Harrington's question earlier about the additional. City Auditor Staschiak looked to see if it is referenced on the documents he has. Councilwoman Frische noted that Ohio State Kids #3192420 is the first one. It says current available to spend is \$3,304. The City Auditor also mentioned other amounts will be coming which she assumes are the ones towards the bottom of the open projects. She asked for clarification on how the \$165 came about. City Auditor Staschiak replied that on these particular grants, the amounts to be reimbursed is \$31,100 for the first one and \$36,412.29 for the second one. Both fall under reference numbers that fall under the amounts you are looking at. In these particular grants, the amounts available through the budget process that we are appropriating are shy of \$100 and \$165 respectfully as opposed to the open projects. What he pulled and quoted earlier was from the appropriate amounts based on the budget that we have available.

Mayor Mihalik asked if we have currently expensed to date out of the Ohio Safe Kids grant. Out of that \$36,000 that we have totally appropriated, we have expensed \$32,000 almost \$33,000 and asked what amount we are refunding back to Ohio Safe Kids because it looks as though we already expensed \$32,000-\$34,000 out of the \$36,000. City Auditor Staschiak replied he will have to get back to her with all the details on it because of the multiple grants they are working with. His office received a letter request for large amounts from the Health Department by email that came to the Service-Safety Director recently. He has not had an opportunity to look at it and has not divided up the numbers. He will report back to Council exactly where we are at on all the grants. Approximately one million dollars (\$1,000,000) was spent on merging the Health Departments. The Findlay Health Department was wonderful in acquiring grant dollars and monies are continuing to come in, some due to reimbursements, some due to amounts due, and some due to services, but there will be several of these that will come your way if the budget amounts don't concur with the amounts that have to go back or have already been paid. This is one of the simpler cases. Some will be more complex.

Mayor Mihalik noted that the City Auditor mentioned earlier that we would be refunding significant amounts (\$31,000 and \$35,000) to these grants, but we have already expensed those dollar amounts. She asked how we will refund money that we have already expensed for those projects. City Auditor Staschiak explained that the reimbursement in these two (2) are \$31,100 and \$36,412. In one case it was \$36,247.29, and in the second case, it was \$31,000, so one is \$100 short and the other is \$165 short which will complete the full reimbursement process. He will have follow up information on the outstanding ones that we have.

Councilman Russel asked if it will cause any constraints if this is tabled. City Auditor Staschiak replied it will not. We are dealing with two (2) specific instances where the money is due back to them. They have requested it. He can handle the amounts that are appropriated, but cannot handle the unappropriated amounts which is the \$100 and \$165 requested in this ordinance. By passing the \$100 and the \$165, it will be cleaned up and done in one swoop which is very easy to do. He will do a full report after the merger so it will be very clear and will explain



the full cost of the merger to the City which is about one million dollars (\$1,000,000), and will also explain the full amounts of monies that are left over that were cleaned up. A lot of this was done by committee work. He did not bring that level of detail with him tonight because he did not think Council would be interested in it. He will put together a special letter that hits all of them because the money is due. The merger has happened and we promised it to them by contract. He just cannot pay it to them yet without proper authorization from Council.

Councilwoman Frische asked City Auditor Staschiak when he mentioned this is just for two (2) and when you say significant other grants, she asked if he was talking about Safe Kids or the MRC, or if it is something else. City Auditor Staschiak replied when he said significantly larger, he was referring to the amounts that are being reimbursed in these two (2) cases as they are significantly larger than \$100 and \$165. He wants to get the full amount in one check per grant to keep it clean. It is more than \$100 that they are getting in the first case and is more than \$165 in the other case based on the outstanding amounts to be reimbursed. It is up to Council to determine if the other amounts are significant or not. There is a lot more money to be given back. The amounts are going to vary. Some are big, some are little. He will report on the full amount so it is known everything that was given. He will do a report to show the cost of the merger and the outstanding monies to be reimbursed that we are currently in possession of that are going to be turned over to the Combined Health Department which they are now requesting. Mayor Mihalik added that it is almost being insinuated that the money has to be repaid to those particular grants and they are not being repaid, but the money is being transferred to the Combined Health District.

Ayes: Wobser, Frische, Harrington, Hellmann, Klein, Monday, Niemeyer, Russel, Shindledecker, Watson. The Ordinance was declared adopted and is recorded in Ordinance volume XX, Page 2016-021 and is hereby made a part of the record.

## **UNFINISHED BUSINESS:**

### **OLD BUSINESS**

Mayor Mihalik noted that Council adopted Ordinance No. 2016-016 tonight which is for an appropriation for a particular grant for our Fire Department to do fire extinguisher training to Vanguard. Both the carbon monoxide programs through Firehouse Subs Public Safety Foundation and this particular Vanguard program are programs that Lisa Phillips in the Fire Department has lead. We are very pleased that someone like her keeps the Chief in line and has a lot of initiative and does good things for our community. She asked the Fire Chief (in the audience) to extend her appreciation, on behalf of the Administration and Council, to her.

### **NEW BUSINESS**

Councilwoman Frische has noticed that parking around the Municipal Building is usually full. It appears that there is a lot of construction vehicles and the same vehicles constantly in the parking lot which makes it difficult to find a parking spot. She asked if it will be a permanent issue and/or why it is so busy especially with the reverse angle parking we now have. Mayor Mihalik replied that it depends on what day of the week and what time of day. Municipal Court has court hearing on specific days throughout the week which jam-packs the parking lot with a lot of visitors. Councilwoman Frische then asked if there are a lot of City employees in the parking lot. Mayor Mihalik replied no, in fact, significant changes were made to the parking arrangements within the first year in office to provide more parking for Councilmembers and also for those who want to come to the Municipal Building and do business here, so a lot of City employees park down the street at what is referred to as Parker Lumber parking lot and also at the Media One parking lot.

Mayor Mihalik noted that there is a significant amount of support from the student body for the Cory Street bike lane and the changes we are making along Cory Street, as well as leadership at the University of Findlay, and in talking with Dr. Kathrine Fell, and members of their Board of Trustees who are in support of what we are trying to accomplish. While the bike lane is a part of the transportation alternative plan, it is not necessarily to primarily benefit the University of Findlay, but is to connect folks in the downtown area to the existing bike paths and trails that we have in our system throughout the City of Findlay.

Mayor Mihalik noted that Site Selection Magazine will be at the Marathon Center for the Performing Arts on March 10, 2016 at 11:00am. We are hoping to be in the upper tier of their micropolitan

Law Director Rasmussen noted that as a housekeeping matter, an email will be sent out to all departments to get back to the rules of Council with ordinances and letters needing to be in our office by noon on Wednesdays before a City Council meeting. Agenda items are arriving on Fridays, Mondays, and sometimes as late as Tuesday morning (the day of the meeting) which does not give him the opportunity to go back and review them. This deals with all routine legislation. If something is an emergency, he will deal with those, but it needs to go back to the Wednesday deadline so Council agendas are not being amended every meeting. Council can change this deadline in their rules if they so desire.

Councilman Shindledecker received a different opinion from the University of Findlay security employees on the Cory Street project. They have discouraged students from riding bikes or walking along Cory Street from Fair Street to Front Street. The railroad tracks cross in an industrial area that is considered an unsafe area for students.

President J. Slough adjourned Council at 8:45pm.

  
CLERK OF COUNCIL

  
PRESIDENT OF COUNCIL