



City of Powell, Ohio

City Council

MEETING MINUTES SEPTEMBER 3, 2013

A regular meeting of the Powell City Council was called to order by Mayor Richard Cline on Tuesday, September 3, 2013 at 7:30 p.m. City Council members present included Jon Bennehoof, Sara Marie Brenner, Tom Counts, Mike Crites, Jim Hrivnak and Brian Lorenz. Also present were Steve Lutz, City Manager; David Betz, Development Director; Debra Miller, Finance Director; Gene Hollins, Law Director; Susie Ross, City Clerk; the Press and interested parties.

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION

Mayor Cline opened the meeting to Citizen Participation for items not on the agenda.

Mark Butler, 407 Western Dreamer, Delaware, said he is here tonight to report to Council about a situation that occurred on August 31st. He said he and his wife came to the City that evening to attend a class at the Village Yoga Studio at 36 N. Liberty Street. He said they were running late so he dropped his wife off and parked his car in the back of the lot behind the Village Yoga and Paris Flea Market buildings. Mr. Butler said he parked his car behind the Flea Market and as he was rushing to make his class and a woman came out of the back door, stood on the platform and appeared visibly angry. He said it startled him when she demanded that he move his car. He said he asked if he could park there and move it after class but she said he must move his car. Mr. Butler said he shared his plight with the director of the yoga studio and she told him he is not the first to have this experience. He said he is before City Council to let them know about the event and the safety issue involved. Mr. Butler said he does not believe that members of a Chamber of Commerce would agree with this way of applying frustration on a stranger. He said he did contact the Police to protect himself and Officer Sanford was very polite and took a report and informed him this was not a crime. Mr. Butler said Chief Vest will review the report and he is appealing to City Council to say this was very inappropriate, whether as a business owner or human being.

Mayor Cline voiced his appreciation for Mr. Butler bringing this to the attention of City Council. He said the City provides free parking at 44 North Liberty and in the lot at 47 Hall Street. He said they hope that Mr. Butler does come back and enjoys the classes and he should feel free to park in the public parking provided at these sites. Mr. Butler suggested they add signage for those from outside of this community to indicate the public parking; the businesses should also post No Parking signs if they want to protect their lots. Mayor Cline said that is the responsibility of the individual property owners but as a community the City provides free parking and they try their best to get the word out. He said he hopes this incident does not dissuade Mr. Butler from coming back to Powell in the future.

Hearing no further comments, Mayor Cline closed the Citizen Participation session.

APPROVAL OF MINUTES

Councilman Hrivnak noted one correction on the bottom of page 3.

MOTION: Councilman Counts moved to approve the minutes of August 20, 2013 as corrected. Councilman Crites seconded the motion.

VOTE: Y 6 N 0

RESOLUTION 2013-13: A RESOLUTION TO RENAME FUND NUMBER 311, "THE 1989 LAND ACQUISITION/CONSTRUCTION BONDS OF MUNICIPAL SERVICE CENTER FUND," TO "THE 2013 CAPITAL IMPROVEMENTS BOND FUND."

Debra Miller, Finance Director, said Fund 311 was closed and this debt was paid off several years ago. She said instead of creating a new fund for the bond issue they are issuing later this month, they would like to rename

this inactive fund. She said this is a debt service fund and it will receive property taxes and pay principal and interest on the issued debt.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Counts moved to adopt Resolution 2013-13. Councilman Hrivnak seconded the motion.
VOTE: Y 6 N 0

RESOLUTION 2013-14: A RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TEX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR.

Steve Lutz, City Manager, said this is a resolution they pass each year in accordance with the Delaware County Budget Commission. He said Ms. Miller has been working with the County Auditor regarding the millage rates that are a little higher than necessary so they will be able to have some of the millage drop off.

Ms. Miller said each year in June they do the tax budget and in September the County Auditor sets the millage including 1.2 mills for the City's General Fund for operating costs and another for the bond fund. She said that is voted debt the residents have approved for collection. Ms. Miller said in 2013 there is a bond issue in the amount of 1.8 mills that is expiring and will be paid off. She said the bond issue they are doing later this month is set to be 1.8 mills so this amount will be added. Ms. Miller said it seems there is a slight issue but they are working with the Auditor to remedy this; the voted amount for the expiring issue was for 20 years but the City has no more authority to issue debt nor do they have any authority to receive that money. Ms. Miller said the Auditor thinks he will have to put the issue on as 0 (zero) mills and not collect funds. She said the net effect is still within the 2 point range when it is all said and done.

Councilwoman Brenner arrived at 7:41 p.m.

Councilman Hrivnak asked for clarification. Ms. Miller said the current bond issue will be paid off this year and they have no need to spend any money in that millage. She said when the parks issue was approved by the voters, the levy was set for a 20 year time frame when in actuality they did a ten year bond issue and were able to pay it all off with the 1.8 millage. She said now they have a 1.8 mill levy that has zero value and zero authority to spend so they are discussing removing that amount from the number. Mr. Lutz said Mr. Kaitsa contacted him and informed him that if they can adopt legislation that states they have paid off the bond that will be adequate for his files; that legislation will come forward at the next Council meeting. Councilman Hrivnak asked if that change will affect the resolution before them at this time. Ms. Miller said they do not need to change this resolution because this will change again by December of 2013. Mayor Cline said this is a tentative amount and the Auditor will send them the final amounts. Councilman Counts said the legislation before them says a revised exhibit is coming. Ms. Miller said she thought the Auditor would be sending them a revised exhibit but he did not. Councilman Lorenz asked if there is any reason to act on this if it will change again. Ms. Miller said they legally have to adopt this before September 30th to inform the Auditor that they want this millage.

Mayor Cline clarified that the vote tonight authorizes the issuance of the 1.8 mills approved by voters in the last election. He said the final millage will come back to the City in December after they have had a chance to pass an ordinance that notifies the County Auditor that the previous 1.8 mills is null and void because it was paid off. Councilman Hrivnak asked if it would be helpful if they acted on this resolution at the next meeting.

Gene Hollins, Law Director, said this resolution will not change before the next meeting because the other legislation will need to be adopted first, notifying the auditor that the millage was paid off.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Counts moved to adopt Resolution 2013-14. Councilman Crites seconded the motion.
VOTE: Y 7 N 0

SECOND READING: ORDINANCE 2013-35: AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR METRO DEVELOPMENT LLC FOR 119 SINGLE FAMILY HOMES ON 69.798 ACRES, LOCATED ON THE SOUTH SIDE OF HOME ROAD APPROXIMATELY 1,000 FEET WEST OF STEITZ ROAD.

Mr. Lutz said they have received a request from the applicant to table this ordinance until the September 17th meeting. He said currently the Liberty Community Financing Authority and the applicant have not reached terms and conditions of joining the Authority, one of the requirements under Section 1, item 6 of the ordinance.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Counts moved to table Ordinance 2013-35 to the next meeting of City Council on September 17, 2013. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

SECOND READING: ORDINANCE 2013-36: AN ORDINANCE APPROVING A COMBINED PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR DOGWOOD ENTERPRISES, DBA AUTO ASSETS FOR THE RECONSTRUCTION OF THE AUTO ASSETS FACILITY, CONSISTING OF A 9,900 SQ. FT. AUTOMOTIVE SALES AND SERVICE FACILITY AND A 7,200 SQ. FT. PARTS AND RACE CAR SHOP AT 354 WEST OLENTANGY STREET.

Mr. Lutz said this is the second reading of this proposed redevelopment project. He said they reviewed this in detail at the last Council meeting and Mr. Betz will provide a brief review.

Mr. Betz said the site of the proposed development is the location of the Germain Auto Body Shop on Olentangy Street. He said the adjoining property owners are swapping land in order to redevelop the site. He said the first phase of the redevelopment is for Auto Assets where they propose building two buildings on the reconfigured site. Mr. Betz said the old building in front of the Germain Body Shop will be torn down. He said eventually a plan will come before Council showing a revised site with a new building for Germain for auto repair inspections. Mr. Betz reviewed the building elevations and site plan. He said this is a very nice facility and they commend the architect and property owner for making this reinvestment into the community.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Counts moved to adopt Ordinance 2013-36. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

SECOND READING: ORDINANCE 2013-37: AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO PRE-ANNEXATION AGREEMENTS WITH WEDGEWOOD LIMITED PARTNERSHIP I AND MOUNT CARMEL HEALTH SYSTEM AND DECLARING AN EMERGENCY.

Mr. Lutz said this is the second reading of this proposed ordinance and this was discussed fully at the first reading. He said the Shops at Wedgewood is a new development which has been approved by Liberty Township and will begin construction toward the end of this year. He said it will be constructed whether it is in the City or in the Township. He said this is a well-planned, quality development with a Target as the anchor store. Mr. Lutz said this site was the site of much litigation over several years and the Courts put that to rest finally when they ruled that a big box is permitted. He said the proposed annexation agreement calls for accepting the building standards and development as already approved by the Township and not granting any exceptions or variances. Mr. Lutz said this annexation will relocate the City municipal boundary and funnel quite a few additional tax dollars into the City's budget. He said Target is expected to open in November of 2014 with an estimated payroll of \$3 million so income tax will be generated for the City. Mr. Lutz said the estimated property tax value is \$9 million, so it effectively reduces the tax burden on all existing corporate and residential citizens in the City of Powell. He said they propose to add this to the City's Sawmill Parkway TIF zone and conservatively speaking, just the Shops at Wedgewood will generate \$1.2 million which can be utilized for improvements along the parkway. He said these could include work such as traffic and beautification and pathways. He said the agreement proposes to reimburse the developer up to \$500k for public improvements for the center.

Mr. Lutz said the annexation also includes the Mt. Carmel Urgent Care Center to the north of this site. He said it sits on 15 acres of land and has a real estate property value of \$4.6 million so this would expand the City's tax base. He said it is important to note that this annexation has been structured so the Liberty Township Fire Department will be made completely whole so they will not lose any money. He said the Township has faced difficulty funding the Fire Department in recent years and this would not add to their burden. Mr. Lutz said a representative is present tonight to answer questions.

Councilman Counts asked if the County Commissioners have acted on the request of the residents in the area to vacate a portion of North Hampton Drive. Mr. Lutz said that is scheduled to be heard by the Commissioners at the end of September. Councilman Hrivnak asked if this is a non-school related TIF. Mr. Hollins said this is a non-school TIF and with respect to this development, it is a non-Township TIF.

Councilwoman Brenner asked how this will impact the revenue for the City. She said she would like to see any percentages or an average of how much the taxes will be reduced. Mr. Lutz said he does not have that information at this time but this would add approximately \$13 million to the current tax base, and the current load would be spread over that amount. He said they can provide that calculation. Councilwoman Brenner said there are some people in the community that do not want this development there at all and it might help to have that information to explain the benefits. Mr. Lutz said this development has been approved and will go

in whether it is annexed or not so the whole community should benefit from it as much as possible. Councilwoman Brenner said when they consider \$500k going back to the developer, she is not against assisting but she has some concerns. She asked if they are setting a standard so when other things are built, the City will always consider it this way. She said she thought these types of things would be going through the CIC so she is concerned about setting a precedent where the City will reimburse for these things. Mr. Lutz said the agreement states the City will offset up to \$500k costs in public improvements so this is not going back to the developer. He said when things go through the CIC and reimbursements are made, that comes out of the City's General Fund. He said the Sawmill Corridor Commercial TIF funds public improvements like traffic signals because the City does not have money in the general fund for these types of costly improvements. Councilwoman Brenner asked if it would be possible to clearly determine the public improvements involved. Mr. Lutz said the applicant may be able to provide specifics.

Mr. Hollins said Staff will bring forward a specific TIF agreement to Council and it will specify the actual public improvements that are eligible for reimbursement. He said this is the first step in the process and a detailed TIF agreement has been drafted and is under review at this time. Councilman Hrivnak said the key word is "reimbursement." Councilman Crites asked if there will be an interest rate that will be earned as well. Mr. Lutz said the City has worked with Financial Advisor Brad Sprague and in this case, instead of reimbursing the full amount needed for public improvements, the City and Developer agreed to reduce the amount to \$500k. He said the City will loan the money and can pay itself back with interest. Mr. Lutz said Mr. Sprague has suggested that if they go to the market today with TIF bonds the interest rates will be over 6% so the City can charge a similar amount in interest, to be determined when they formalize the loan. Ms. Miller said at this time StarOhio gives 2-3 basis points on the General Fund, equaling about 0.3 of one percent. Mr. Lutz said this can allow them to make a better guaranteed return than they could otherwise. Councilwoman Brenner said a couple of people have indicated they do not think this is the right way to do this and the whole thing does not sit comfortably with her. She said she would like to hear about the public improvements from Mr. Ruma since they need to make a decision tonight.

Councilman Bennehoof asked if the TIF keeps the Liberty Township Fire Department whole with respect to this development or with respect to the entire TIF. Mr. Lutz said that would be in respect to this area. Councilman Bennehoof said several annexations ago he asked that Staff provide a business/value proposition for any further annexations. He said because this is pre-annexation he understands that some of the details are being worked out but he would like to know the ongoing costs, police/fire and developmental costs funded by the City. Mr. Lutz said that is relatively easy to do and they can put that together for the annexation ordinance. Mayor Cline asked for clarification. Councilman Bennehoof said he would like to know the benefits and costs to the City of each proposed annexation. Mr. Lutz said generally speaking, residential development does not pay for itself and commercial/business development does. He said there will not be a single child added as a part of this development but it will add a \$9 million tax base to the City. He said they will provide the details before the annexation comes forward.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Counts moved to adopt Ordinance 2013-37. Councilman Crites seconded the motion.

David Ruma, 5 South Liberty Street, said they are still in the process of determining what qualifies as a public improvement and what should be considered. He said at this point they are looking at roadway improvements such as turn lanes, striping and mill and overlay on roads that need that type of work. He said they may consider utility extensions but they need to decide which of these types of improvements will fit in this situation. Mr. Ruma said they have not yet identified all of them and that is why they set the amount. Mayor Cline asked if those are the areas of concern that they anticipate applying for. Mr. Ruma said that is correct.

Councilwoman Brenner asked if they are considering an amount up to \$500k and are not sure what these improvements are, would it be better to set a percentage of reimbursement rather than a finite dollar amount. Mr. Hollins said Mr. Ruma is a buyer in this scenario and the sellers are a consortium of tens of dozens of individuals that Mr. Ruma has had to work with to reach a consensus. He said the timeline would not fit for Target if they do not take action tonight. Mayor Cline said it actually protects the City when they give them a finite maximum. Councilwoman Brenner said she would think they would have that even if they did not have a percentage.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2013-39: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2013.

Ms. Miller described the appropriation requests within this ordinance.

- *Requesting an appropriation/transfer from the General Fund to the Flexible Spending Fund in the amount of \$1,050.00.*

She said an employee can take pre-tax dollars and put them in a special Flexible Spending Account to be used for medically-related expenditures and then they must "use it or lose it" within the rest of the year. She said the City benefits when they "lose it" because it allows them to use the funds to pay for administrative costs for the plan but in this case the City up-fronted the funds and the employee left before the end of the year. She said the City cannot require the employee to repay the up-fronted monies they have already spent. Ms. Miller said typically there has been enough in the fund to cover these instances but they have low membership and this is the first time they do not have the funds to cover the shortage.

- *Requesting an appropriation/transfer from the Powell Commercial TIF, Operating Expenditures, in the amount of \$85,500.00.*
- *Requesting an appropriation/transfer from the Powell Commercial TIF, Capital Outlay, in the amount of (\$20,060.00).*
- *Requesting an appropriation/transfer from the Powell Commercial TIF, Operating Expenditures, in the amount of \$20,060.00.*

Ms. Miller said at the beginning of this year the City received \$134,758.30 from the County Auditor for the retro payments for a couple of years as well as the current TIF fund. She said Staff received word two weeks ago from the County Auditor that they mistakenly gave the City more money than they were entitled to receive in these funds, overpaying the City by \$114,798.68. She said they should have received only \$19,959.62. Ms. Miller said they have already spent \$201.00 from the fund for County Auditor expenditures and have encumbered \$29,940.00 for the Burgess and Niple studies. She said they are now left with \$7,700.00 in the account.

Ms. Miller said they have a balance in Capital Outlay of \$20,060.00 and if they reduce the appropriation in that fund in that amount and move it to Operating Expenditures it can be used to refund the overpayment. She said there is only \$16k left in the Operating Fund appropriation so she is asking to move \$85,500.00 from the Commercial TIF to Operating Expenditures. She said once these appropriations have been completed they will be in the black for this account and she will be able to refund the overpayment to the County Auditor.

Councilman Hrivnak asked if they should have noticed the gross amount of this overpayment and do they have a way to verify the amount due. Ms. Miller said they cannot do that with the first retro payment. She said in the case of the Downtown TIF the City hired someone for about \$6k to audit the County Auditor for that payment. Mr. Lutz said when they completed that audit they ended up getting another \$70k. Councilman Hrivnak asked if they are comfortable that the adjustment they are making is now correct. Mr. Lutz said Staff has not had a chance to discuss that and they may want to consider an audit. Mayor Cline said they need to go forward with this legislation so they have the flexibility to refund the overpayment.

Ms. Miller said that is correct; they will need to pay the refund, let the Auditor clear the books and then allow them to refund any monies due to the City. Councilman Lorenz said this is just for the Commercial TIF and they just passed a pre-annexation agreement and agreed to assist the developer with public improvements. He said this is a pretty significant amount of money to refund; are they in any jeopardy with these funds long-term? Mr. Lutz said this is in regard to the initiation of the TIF and it takes several years to go through the TIF process so there is always a lag of several years. He said once they get the retro corrected and they know the 2012 amount, then the next year's amount will be estimated at slightly more than the previous years and they can see a trend.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Counts moved to suspend the rules in regard to Ordinance 2013-39. Councilman Lorenz seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2013-39. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2013-40: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2013.

Ms. Miller described the appropriation requests in this ordinance:

- *Requesting an appropriation from Voted Capital Improvements Fund, Repay Advance, in the amount of \$100,000.00.*
- *Requesting an appropriation from "2013 CIP Bonds", Interest, in the amount of \$50,000.00.*

Ms. Miller said in November 2012 they adopted a resolution so the City could loan itself money and repay themselves once they got the bonds issued later this month. She said in June they asked City Council for a \$100k advance from the General Fund to the Capital Improvements so they could start engineering studies. Ms. Miller said the first appropriation will repay the advance of up to \$100k when they get the money. She said because of the timing, she just put in an estimate of the interest costs for the 2013 bond issue which will be issued later this month but they should owe a few thousand dollars in interest in December. She said she has asked for \$50k and once she has an actual number she will come back to City Council with legislation to unappropriate the difference.

Councilman Hrivnak asked if the \$50k is interest on the advance of \$100k. Ms. Miller said it represents the interest on the approximately \$4.1 million bond issue they will get later this month for the September, October, November months. She said the timing requires that they not wait because by the time she has the actual numbers it may be mid-October.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Counts moved to suspend the rules in regard to Ordinance 2013-40. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2013-40. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2013-41: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2013.

Ms. Miller described the appropriation requests in this ordinance:

- *General Fund, Council/City Clerk Department, Operating Expenditures, in the amount of \$4,000.00.*

Ms. Miller said the City Clerk is asking for an additional \$4k in the Codification line. She said typically they get the Codification bill after the year has already closed so they never have an exact amount. She said the 2012 invoice was a little higher than normal so they used some of the 2013 funds to pay for it. Ms. Miller said not only will they have the 2013 codification due but it will be significantly higher because of all of the Charter Amendments adopted this year. She said they are asking for additional funds from the Contingency Fund to cover these expenses.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Counts moved to suspend the rules in regard to Ordinance 2013-41. Councilman Lorenz seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Ordinance 2013-41. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2013-42: AN ORDINANCE TO AMEND SECTION 549.08 OF THE CODIFIED ORDINANCES OF THE CITY OF POWELL REGARDING THE DISCHARGE OF DANGEROUS WEAPONS.

Mr. Lutz said recently a resident has had discussions with Police Chief Vest regarding an ordinance on City books about the discharge of dangerous weapons. He said at this time the City prohibits the discharge of dangerous weapons within the City and that is typical of most municipalities. Mr. Lutz said the residents pointed out that the ordinance was written with no exceptions for toy weapons such as Nerf items; by the letter of the

law these were prohibited. He said the Chief and Mr. Hollins have worked together to modify the ordinance to provide an exception for toy weapons, so individuals who are playing with these toys on their property are not breaking the law.

Councilman Counts asked if their ordinance was overly restrictive as compared to other municipalities. Mr. Hollins said these types of ordinances have been around for a long time and they were intended to capture anything that shot a projectile such as air weapons. He said as time has gone on, the code has not been updated to keep it current with the technology. He said they went back and looked at the definitions within this ordinance and made updates. Mr. Hollins said Police Officer Ben Boruchowitz completed some research and wrote the first draft of this legislation.

Councilman Counts asked if Chief Vest is comfortable with this ordinance.

Gary Vest, Powell Chief Vest, said this ordinance now allows for common sense discretion and if a child misuses anything, including any other toy, they can look at the outcome of the event instead of the toy weapon. Councilman Hrivnak asked if they considered a reference to the orange tip on some of the toy guns. Chief Vest said weapons that look like authentic weapons have the orange tip but it is very difficult to even buy those any more. He said the toys they are dealing with are clearly distinguishable as toy weapons. Councilwoman Brenner asked if this affects anything on City park land. Mr. Lutz said the way this is written, these types of items would be prohibited in the parks because they are only permitted on private property. Councilwoman Brenner asked if they are worried this will confuse the residents. Mr. Lutz said from a Staff standpoint they would like to restrict or prohibit these types of items from public parks because of other users in the park and the distraction these toys could present. He said it is like a skateboard that is prohibited in all parks but the skate park. Councilwoman Brenner asked if they think they will need signage in the parks. Mr. Lutz said if it becomes a problem they might consider signage but they have never felt the need to bring this to the public's attention.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

Mayor Cline said his guess is that Section 549.08 is based on state law and they have now modified state law slightly. Mr. Hollins said they have not in this case; it is a common municipal ordinance to prohibit the discharge of firearms within the municipality, however if one steps outside of the municipality, the township areas allow the discharge of firearms. He said there is not a state statute on this issue. Mayor Cline also noted that this is a great common sense solution to what can turn out to be a fight between neighbors; it gives the officer a reason to say that they are not charging someone with an offense.

MOTION: Councilman Counts moved to suspend the rules in regard to Ordinance 2013-42. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2013-42. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2013-43: AN ORDINANCE TO AMEND SECTION 339.02 OF THE CODIFIED ORDINANCES OF THE CITY OF POWELL REGARDING USE OF LOCAL STREETS; LOCAL PERMIT AND CONDITIONS.

Chief Vest said the current ordinance was adopted with a dollar amount of \$10 as a fee for each hour of special duty of a police officer. He said the fees are set though the City fee schedule so this amendment will allow the removal of the set fee from the ordinance and add reference to the fee as set in the current fee schedule. Chief Vest said a change in the state law prompted their review of this section of the codified ordinances that states a municipality would have to issue a permit for every vehicle which originates here or does not have a permit and is traveling through this area. He said they have never issued such a permit in the past 17 years but since the law requires they be able to do that, they must set a fee and if they are notified that someone has made a request, they can refer to the fees within the fee schedule.

Councilman Lorenz asked if moving a house down the street is a good example. Chief Vest said it is. He said this ordinance gives him the prerogative to determine whether a use needs an escort or not. He said he can authorize it and if special duty officers are required the permit holder will pay the fee established for special duty rate and vehicles as set in the fee schedule. Chief Vest said the fee schedule can be changed when appropriate and keeps Council from continually revising this Section when the fees change. Councilman Bennehoof asked if this includes other fees such as removing wires or traffic signals so the house may pass. Mr. Lutz said on those items there is other legislation involved.

Mayor Cline asked about the provision in the ordinance that speaks about signage to be displayed; is that only required when a house is moved or is this in regard to high load trucks. Chief Vest said if they have acquired a permit from ODOT, that permit is good in the City. He said if the Police see and stop an overweight vehicle and it does not have a permit before it came into the City, they would fine them for the overweight vehicle and the violation within this law. He said they do not have to get a permit in each jurisdiction. Chief Vest said the change in the law requires the City to be in a position to issue a permit and he did not plan on issuing one until the legislators decided he should. Mayor Cline said in Section 1 (b), in the fifth unnumbered paragraph, it refers to signs and he would like to know if these are uniform traffic manual signs the City routinely installs. Mr. Hollins said they will have to look in the manual to see if they are mandated to install these signs. He said this is mandated on the City by the State so the municipalities must issue the appropriate overweight permits under certain conditions if they are met. He said if they look at more aggressive weight enforcement it will be a good idea to add more signage.

Mayor Cline said inevitably they adopt an ordinance that criminalizes conduct and puts people at risk of going to jail and that is nobody's intent; but in ten years this Council will be gone and who knows the intent of the next Council. Chief Vest said he spoke with the City Engineer before they started this process to try to determine when a vehicle is overweight and if it is overweight, how much should the City anticipate charging for the weight of the truck and the damage it could create. He said Mr. Rice was unable to give him a weight size so when he looks at an oversized load he is not looking at volume but instead the width, traffic impact, and resources of the City that are tied up. He said to him it is more of an "oversized" vehicle. He said if it is traveling on the road and making crunch marks on a City street he can deal with that as overweight but for most vehicles they have no intention of going down an avenue where they call in assistance to determine overweight vehicles. Chief Vest said if someone is moving a house he can reasonably infer that it is a disruption if there is a re-routing of traffic. He said in that instance they would require a permit. He said if they can get from one end of the City to the other and keep their truck intact, he is 90% sure they will have no problems.

Mr. Hollins said it occurs to him that if the City establishes certain weight limits other than 80k pounds those things do need to be posted on signs to apprise the public of the weight or width/length limit that is more restrictive than the state limits on a certain road.

Mayor Cline opened this item to public comment. Hearing none, he closed the public comment session.

MOTION: Councilman Counts moved to suspend the rules in regard to Ordinance 2013-43. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Ordinance 2013-43. Councilman Crites seconded the motion.

VOTE: Y 6 N 1 (Cline)

COMMITTEE REPORTS

Development Committee: Councilman Hrivnak said they met this evening and discussed the organization of the bike path connectivity. He said they provided Staff with several principles of design and asked them to use those principles to sort out the connectivity points. *Next Meeting:* October 1st, 6:30 p.m.

Finance Committee: No report. *Next Meeting:* September 10th, 7:00 p.m.

Operations Committee: No report. *Next Meeting:* September 17th, 6:30 p.m.

Planning & Zoning Commission: Mr. Lutz said the Planning & Zoning Commission will review a Preliminary Development Plan for a proposed patio home community next to the Powell Center. *Next Meeting:* September 11th, 7:00 p.m.

CITY MANAGER'S REPORT

Mr. Lutz said what he provided in Council packets was information stating that effective in October, the State modified the reasons that municipalities can meet in Executive Session. He said it has been expanded to include certain types of economic development activity on the list of possible topics.

Councilwoman Brenner said they have to have a conversation about this because it was on the ballot and it failed. She said she realizes the State has permitted it but their citizens said "no." She said they need to be careful. Mr. Lutz said the Charter Amendment on the ballot was much broader than this; the City Council could identify the topic of Executive Session by a super-majority vote. He said the State has allowed a specific topic and there is a distinction. Councilwoman Brenner said she is tying the two together because when they discussed the amendment she asked what they could use the discussion for and the answer was "economic

development." Councilman Hrivnak said that was an example of a topic they could discuss. Mr. Lutz said the only way City Council can meet in Executive Session on any item is if there is a majority vote. Councilman Crites said this reason specifically requires a unanimous quorum vote and that is a distinction as it is much harder to call. Councilman Hrivnak asked Mr. Hollins if there is anything the City needs to amend in their codified ordinances. Mr. Hollins said their Charter will still recognize any state law exemption.

OTHER COUNCIL MATTERS

There were none.

MOTION: Councilman Counts moved at 8:45 p.m. to adjourn the meeting. Councilman Crites seconded the motion. By unanimous consent, the motion was approved.

DATE APPROVED: September 17, 2013

 9/30/13
Richard Cline
Mayor Date

 9/30/2013
Sue D. Ross
City Clerk Date