

City of Powell, Ohio
City Council

MEETING MINUTES

October 16, 2018

CALL TO ORDER/ROLL CALL

A regular meeting of Powell City Council was called to order by Mayor Jon C. Bennehoof on Tuesday, October 16, 2018 at 7:30 p.m. City Council members present included Jon C. Bennehoof, Frank Bertone, Tom Counts, Brian Lorenz, Brendan Newcomb, Melissa Riggins and Daniel Swartwout. Also present were Steve Lutz, City Manager; Eugene Hollins, Law Director; Debra Miller, Finance Director; Megan Canavan, Communications Director, Karen J. Mitchell, City Clerk; and interested parties.

OPEN SESSION

PLEDGE OF ALLEGIANCE, colors presented by Pack 428 "Space Cobras", Ryan Griffin, Den Leader

CITIZEN PARTICIPATION

Mayor Bennehoof opened the citizen participation session for items not included on the agenda.

Leif Erickson, 178 Beech Ridge Drive: I am here tonight because of my concern with Statute 521.06 – the sidewalk and repair and clean law and the upcoming income tax ballot issue. I see some conflicts. I would like to pass out a flyer. ([Exhibit A](#))

I love Tom Counts and took a photo of one our Councilman's house and he's got a sign in front of his driveway for the exact same issue that the City Manager has turned me down for the last two years. I understand that the underlying issue is funding, but when I'm being told that we can't fix that because of this law, then I think that when we pass the funding I'm left with the impression that we are still not going to be able to fix the problem because the law will still prohibit it. So how is it going to magically fix itself after we give you guys \$2 million dollars? And since we can't fix it now and if we do pass the levy, what kind of pecking order will this be in? I think the underlying issue is the law. I brought this to your attention before and it hasn't changed. Now you are going to have a possible income tax increase and the law still stinks.

Councilman Counts: I wish we had been able to talk about this off line, but I do think in our conversations, I've been very supportive of the issue that you've raised and how I feel that the City should be taking care of not only your problem but the curbs as well. But I've also indicated that there's no money to do that. This ballot issue has the opportunity to provide the money for that. That is what my goal is - to not only provide funding for it, but also to fix your problem and the problem that many other residents in our City has. This is the kind of thing we are faced with. It's a no-win situation, but unless we come together, we will never fix this.

Mr. Erickson: I am not against the levy.

Mayor Bennehoof: I am going to suggest that perhaps a follow up conversation, outside of this venue where we can have a more open dialogue, would be appropriate. I understand that you have tried a number of times. We have the suffrage of not enough funding and we have laws that we have to abide by. There are Task Force sessions that you could attend.

Mr. Erickson: I have attended some of the Task Force sessions. I don't want to be mad and I don't want you to think I'm singling you out, Tom, I just almost drove off the road when I saw the sign. It's so ironic. We are on the same side, but I see nothing to tell the City Manager to put our problems up front. You've told me that Beech Ridge isn't going to be fixed until 2029. There's nothing that changes the

pecking order or addresses the situation. Even if they fixed the curb, the driveway is still messed up. There are several homes in Olentangy Ridge where it isn't just the curb.

Janet Wartman, 130 S. Liberty Street: I'm a little concerned about the sign at the Four Corners that says the levy is going to fix the Four Corners. I want to ask you if you really believe that? That this is really true?

Mr. Lutz: I don't know, what sign? I assume it's not a City sign?

Councilman Lorenz: What sign Janet?

Ms. Wartman: There's a sign at the Four Corners that says 'we can fix this.' [Councilman Lorenz: Is it a white one?] Could be.

Mayor Bennehoof: That's probably from the Powell Pac that...

Ms. Wartman: Well I think it's a false statement. And I think because you're pausing, it is a false statement. I've been here a long time. I know what the Four Corners are like. We had an opportunity when the hardware was torn down before Jenny's was built that we could have done something about the Four Corners. But it was deemed by the Council at the time that it was *not feasible*. If it was not feasible then, how can it be now?

Mayor Bennehoof: We don't generally engage in conversation in this venue, but I will make this one comment. There is the Keep Powell Moving plan. [Ms. Wartman: I know, I know. I'm on the road, so I'm well aware of your plan.] There are alternatives to....[Ms. Wartman: I know, like building a road through my house.] Well since you seem to know, I'll let you continue.

Ms. Wartman: So anyway, I'm also against the Four Corners, having no left-turn 24 hours for the reason that some people have a Google app that tells them to turn there. If we say, they're excused because Google told them to do it we are going to be saying that whenever Google tells you to do something, it's alright to do it. People have to think for themselves. You don't do what Google says. Additionally, there are 12 hours or more in the day where there is not enough traffic to warrant no turns at the Four Corners. I often go to Kroger late at night and there's no traffic and no problem turning. As a night owl, I would really resent that. I think that before you try that you should try raising the speed limit. If we were in Columbus, Grace Drive, with its center lane, would probably be 45 mph. Murphy Parkway would be 35 mph. I think you should look into raising the speed limit in these places before you consider putting no turns at the Four Corners forever.

Dr. Ali Khaksar, Powell resident and Developer of Armita Plaza: I have been a resident here since 2005. This is about the Armita Plaza development. This development has two entrances from Lincoln Street and Traditions Way. The development passed zoning July 2015 based on the traffic study report. I was asked to do public roadway improvement on Lincoln Street. The second attachment shows the minutes made by the zoning and the traffic study that outlines what I'm supposed to do, which is putting in a right turn lane, left turning lane, and widening up Lincoln Street. I agreed to do all that work even though you will see on the pictures, my primary access is not even from Lincoln Street. The secondary entrance was only placed for the customer convenience. Seventeen months later, in November 2016, when City engineers finalized the public roadway improvement, I noticed that I am now required to do public storm water management along with the road improvement which was an additional \$240,000 fee. This additional cost of storm water management has caused the base rent for this development to be increased by at least \$4 per square foot to just break even with the mortgage payment. This increase in base rent has caused me to lose so many great tenants for this center and send them to other competitors in Dublin and Worthington. I would have never done this development if I knew ahead of time. The last attachment that you see is my mortgage payment to Huntington, which is \$26,000 per month and started last June. I honestly don't know how long I can go on paying out of

pocket as my development is remaining vacant. At some point I will have to fold and deal with a vacant development.

Richard T. Craven, Esq., Sikora Law Office, LLC, Attorneys for Armita Plaza, LLC, 170 W. Olentangy Street:
My question is: Is this City pro-development? I think the answer is yes. We are not here asking for a handout because of rising construction costs or market fluctuations. We are here to request you to agree to allocate \$250,000 in TIF funds for the public improvements so this project can get completed. It's scheduled to be completed in January 2019 and we can start filling up the space. Last Friday, I submitted a letter to the City that had multiple letters of interests from really good tenants and because of the interest in the site we were at 95% occupancy. Today my client has paid a cost in this project of \$4.4 million dollars and Armita Plaza has not received a single penny from the City in terms of incentives. Not one dime from the City. Now we are here, we are asking for public improvements that the City has required in order for us to operate our center. Out of those public improvements, they are going to cost \$425,000. My client has said he would pay for \$175,000 in good faith. That is what we agreed to pay for when we first submitted the plans. As the plans changed over time, it became more extensive and they grew to \$425,000. I believe the City is pro-development. The answers we have gotten from the City Manager and development is that they cannot issue a TIF because of precedent and timing. Those are the only reasons we've been given. I strongly disagree with the premise that you should look to precedent over getting a project done. It is a great project that will provide millions of dollars in tax revenue and wonderful places for people to visit. (Exhibit B)

Mayor Bennehoof: There's probably another opportunity for off line conversation; however, I believe there's been a good bit of that already. [Mr. Craven: We've exhausted that, yes.] We are pro-development; however, the conditions of the development were set at the beginning. I encourage you to reach out to the Development Director and City Manager for further conversation, if you are so inclined.

Mr. Craven: We would like Council to weigh in on whether the TIF is going to get approved or not.

Hearing nothing further, the Mayor closed the public comment session.

APPROVAL OF MINUTES – October 2, 2018

MOTION: Councilman Counts moved to approve the minutes of October 2, 2018. Councilman Swartwout seconded the motion. By unanimous consent of the remaining members, the minutes were adopted.

CONSENT AGENDA

Item Action Requested

- Departmental Reports – September 2018

Receipt of Electronic Reports

MOTION: Councilman Counts moved to approve the consent agenda. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2018-51: AN ORDINANCE ACCEPTING THE ANNEXATION OF 44.29 +/- ACRES, MORE OR LESS, LOCATED AT THE CORNER OF SAWMILL PARKWAY AND HOME ROAD, FROM LIBERTY TOWNSHIP TO THE CITY OF POWELL, AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A DEVELOPMENT AND INCENTIVE AGREEMENT RELATING TO THE AVAILABILITY OF SEWER SERVICE TO THE ANNEXED AREA AND A DEVELOPMENT AND INCENTIVE AGREEMENT RELATED TO CERTAIN JOB CREATION INCENTIVE PAYMENTS, AND TO DECLARE AN EMERGENCY. (EX. A) (EX. B) (EX. C)

Steve Lutz, City Manager: Tonight is the first reading of the proposed annexation of the northeast corner of Sawmill Parkway and Home Road. The main tenant, approximately 30 acres of this site, is The Ohio State University where they will be building an ambulatory care center.

Under Ohio law, after the county has approved the annexation to move forward, there is a 60 day wait period and then the annexation ordinance is required to be brought before Council. We don't know when the second reading will take place because there are still elements of this annexation which have to be finalized.

There are two attachments that were not included with this first reading of this Ordinance. The first one is authorizing the City Manager to enter into a Development and Incentive Agreement relating to the availability of sewer service to the annexed area. Delaware County provides sanitary sewer to the City of Powell and right now negotiations are being finalized between the county, Ohio State and the City regarding how the sewer will be built and paid for. It's an approximate \$900,000 expense.

Also the other attachment that wasn't included deals with the job creation incentive payments. Those incentive payments will be consistent with the pre-annexation Ordinance that Council adopted on July 5th this year. Aaron Underhill, Esq. is here for Ohio State to answer any questions you may have.

Councilman Newcomb: How can we have a first reading without those exhibits being seen?

Gene Hollins, Law Director: Certainly they are public records if you would like to take a look at them. We've been working on them, so they are in draft. The issue with the drafts is that this is not just two party agreements. With respect to each, there's a third party so we are reliant on someone out of our control to bring them to fruition. We wanted to tell you that we had to put this on your agenda by state law. After expiration of 60 days after it is approved by the County, we have a duty to lay it before Council. These agreements get very involved and there are still business terms we are trying to nail down with the County, so we didn't want to prematurely cause a whole lot of consternation about business terms that may become null and void before the second reading. Unless we hear different from OSU, our intention is to get these resolved before your next regular meeting to keep OSU on schedule with respect to this.

Councilman Newcomb: So it's okay to have a first reading without the attachments?

Mr. Hollins: Sure.

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

Ordinance 2018-51 was taken to a second reading.

FIRST READING: ORDINANCE 2018-47: AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDED AND RESTATED CENTRAL OHIO HEALTH CARE CONSORTIUM JOINT SELF-INSURANCE AGREEMENT FOR THE PURPOSE OF RETAINING MEMBERSHIP IN SUCH JOINT SELF-INSURANCE PROGRAM TO PROVIDE HEALTH CARE BENEFITS, AND DECLARING AN EMERGENCY. (EX. A)

Mr. Lutz: This proposed Ordinance was reviewed at the budget hearing last week. Our Finance Director will review this matter which is to participate in the Central Ohio Healthcare Consortium.

Debra Miller, Finance Director: The City joined the consortium approximately 6 years ago and have seen, in my opinion, very good rates compared to the national average and Obamacare. This is for the City's health insurance. We approve this every 3 years so the consortium can lock in contracts with providers and drug industries, so that the consortium can negotiate those contracts that allow a savings to all the entities, including us. There are currently eleven entities in the consortium, and there are several other entities that are interested in joining over the next couple of years, so the next time we renew we could be looking at a bigger consortium.

When we had our third party health insurance provider look at what the Obamacare cost would be, we were looking at 14-17% under those rates compared to this year's rates. I do think we are getting a good value for our monies and recommend we continue with the consortium.

Councilman Counts: I would add that the Finance Committee looked at this, reviewed the document, and believe that it is appropriate for Council to act on this tonight.

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

Mayor Bennehoof: Is it desired to suspend the rules on this?

Mr. Hollins: It is Council's discretion, but that would be the request.

Councilwoman Riggins: Why would we want to suspend the rules for this?

Mr. Hollins: We drafted it as an emergency. Sometimes we do two readings on emergencies. Frankly, we need to get eleven different jurisdictions to get this through their processes, but it is your discretion. Debra, is there a drop dead date on this?

Ms. Miller: Everyone needs to be approved and effective by December 31st.

MOTION: Councilman Counts moved to suspend the rules regarding Ordinance 2018-47. Councilman Lorenz seconded the motion.

VOTE: Y 5 N 2 (Newcomb, Riggins)

MOTION: Councilman Counts moved to adopt Ordinance 2018-47. Councilman Lorenz seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2018-48: AN ORDINANCE AUTHORIZING AMENDMENT TO THE FEE SCHEDULE OF THE CITY OF POWELL. (EX. A)

Mr. Lutz: This is a component of our public budget process. We began open meetings review of our budget with the Finance Committee back in September. We had a meeting in October and this is a final component of the budget, our fee schedule. We take a look at our fees every year and recommend adjustments to the fee schedule based on the cost of providing services based on what other communities are charging for services. Debra will give a review of the proposed changes for the 2019 schedule.

Ms. Miller: A lot of attention was paid this year in the construction and building area because our fees, compared to what our expenses were, were dropping below the 50% cost. You will see where department heads have gone out to do some comparison shopping to make sure that our fees are not the lowest, but somewhere in the middle or closer to the top for many of our fees. These fees should help us maintain the 50% plus revenue compared to expenses for the three departments: Building, Development and Engineering.

Councilman Newcomb: You compare the fees. Do other communities use that 50% revenue to expenses?

Ms. Miller: No they do not. That is something that the City of Powell does because we look at what they are doing on the worksite – that half of the work is government-related so they are doing work for the City of Powell and not for a developer or homeowner. We are looking to make sure the homeowner and those developers are paying for that time period.

Mr. Lutz: And for a little clarification, we really don't know how other communities structure their fees. They may have a certain ratio, but our program is not universal, and each community has their own philosophy.

Councilwoman Riggins: I have a question regarding the wording on the Double Fees that appears on pages 6, 9, and 25. Under subsection (a), the first line doesn't seem to make sense. I guess I would propose that it read "any person desiring to do, or causing to be done, any work for the...." The way it reads now doesn't make sense.

Ms. Miller: Before the second reading, we can look at Ordinance 1987-26 that's cited and compare the language to be sure that it is a verbatim citation. If it is, we may need to look at amending Ordinance 1987-26 since it is supposed to be a verbatim quote.

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

Ordinance 2018-48 was taken to a second reading.

FIRST READING: ORDINANCE 2018-49: AN ORDINANCE TO ADOPT SECTION 537.19 OF THE CODIFIED ORDINANCES AND TO PROVIDE FOR PREPARATION OF A SUPPLEMENT TO THE MUNICIPAL CODE.

Mr. Lutz: I will ask our City Clerk to provide a review regarding this Ordinance and the next Ordinance which deals with the annual codification.

Karen J. Mitchell, City Clerk: This happens twice a year. We use Municode as our codifier. They review the state criminal and traffic code for changes and send us those changes to codify into our City Code. These are the changes that have been made to the code since the last time we codified which was earlier this year.

Councilman Swartwout: So this language mirrors the language that is now found in the Ohio Revised Code. It's the exact same language.

Ms. Mitchell: That is correct.

Councilman Newcomb: Are we talking about [Ordinance 2018]-49 and [Ordinance 2018]-50 at the same time.

Mayor Bennehoof: We are talking about Ordinance 2018-49.

Councilwoman Riggins: I talked to Karen before the meeting about these [Ordinances]. She explained to me that these are certain sections of the Ohio Revised Code that Municode decides to send to us to request us to make updates and then, if we pass these updates, then they charge us to do these updates. Am I correct on that?

Ms. Mitchell: Municode does the legal review and that is part of a bulk rate that we pay annually and that rate doesn't change. The only thing that changes is there is a per page charge to our actual ordinance pages that is charged over and above our annual rate. So if we have a four page Ordinance that gets codified, they will charge us for those four pages.

Councilwoman Riggins: My concern is I'm understanding that these recommendations or changes are proposed by Municode, our codifier. How are these sections of the Revised Code chosen to present to us and, as far as on the expungement section, I do know that there has been other amendments and soon to be amendments to the expungement statutes under the Ohio Revised Code that will be

coming. So I'm not sure why they pulled out this expungement of records for human trafficking victims found not guilty because there are several other statutes that also deal with expungements that either just haven't amended yet or will be shortly amended. My point being there's going to be more statutes amended, and if we adopt this and have these changes made, then shortly thereafter we will have to do it again and pay again to have these pages redone, if all of these sections are going to be updated.

Mayor Bennehoof: Municode provides a consulting service to the City and they tell us we are out of compliance with the codified ordinances and therefore, they need to do this in a timely manner. The others aren't ripe yet, is that correct?

Ms. Mitchell: That's correct.

Mr. Hollins: If it helps, between first reading and second reading. I think we should have a conversation with Municode. What is represented to us in their title sheet is that that they were trying to capture all the traffic code and criminal code state law changes so that we can incorporate those into our codified ordinances from July 2017 to July 2018 – that would be those that became effective during that time period.

All codifiers have their strengths and weaknesses. We changed codifiers because we were having issues with electronic availability of our old codifier. They were sort of left behind when everything went electronic. These folks have a great website product and is very easily accessible. We are still working with them. We were used to getting thick binders of updates and to see just one criminal section for an entire year, I'm a little concerned that we are not capturing all the changes. At the end of the day, why do we have these in our ordinances? This is so, frankly, our own officers can choose to charge under our own Ordinances rather than state law and it goes through municipal court. We have a little more control over those circumstances. But we do have an overall responsibility to keep our traffic and criminal code in substantial conformance with the state code and that is why we do this.

So between first and second reading, I hope to get a better answer to your question. Being the codifiers that they are, by the page is somehow how they make money. At least they can point to the state legislator and say, they made me do it. But we rely on them for that service. They send us all the stuff to incorporate it and we pay them to incorporate it.

Councilman Swartwout: Karen, I believe in addition to the things Gene mentioned as far as changing codifiers, it also resulted in a cost savings, correct?

Ms. Mitchell: It is, yes.

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

Ordinance 2018-49 was taken to a second reading.

FIRST READING: ORDINANCE 2018-50: AN ORDINANCE TO AMEND SECTIONS 301.22 AND 301.51 OF THE CODIFIED ORDINANCES, TO ADOPT SECTIONS 331.45, 339.12, 331.46 OF THE CODIFIED ORDINANCES.

Mr. Lutz: These proposed code changes deal with the traffic code. The previous Ordinance was dealing with the criminal code. So I think what Staff's direction will be is similar marching orders that you presented us with the previous Ordinance.

Councilman Newcomb: What is a personal delivery device?

Mr. Hollins: I believe they are talking about drone deliveries.

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

Ordinance 2018-50 was taken to a second reading.

COMMITTEE REPORTS

Development Committee: Next Meeting: November 7, 2018, 6:30 p.m.

Finance Committee: Next Meeting: November 13, 2018, 7:00 p.m. We met last week and discussed the budget for 3 hours. I believe the budget will be presented for its first reading at the first meeting in November.

Operations Committee: Next Meeting: October 16, 2018, 7:00 p.m. We met this evening. The Committee discussed current laws that regulate scooter use. We've noticed an uptick in those devices being used around Central Ohio, specifically downtown. There's been some here and we wanted to be sure our current laws address them adequately. We received a memorandum from our Law Director and had some conversation on that. We are all set and have enforcement covered for those as far as how they are regulated so we don't need to enact any new legislation. Secondly, we discussed improving the Lechler Building and Melissa had inquired about simply painting the building to enhance it. Before we have Steve go out and solicit RFPs for what that might cost, we thought we'd bring it up tonight to see if there is an interest to move forward. With a thumbs up or down, I ask Council if we should move forward with getting painting proposals. [Council indicated consent by all thumbs up.]

Planning & Zoning Commission: Next Meeting: October 24, 2018, 7:00 p.m. At the last P&Z Commission, the Commission received a sketch plan for a proposed infill development just south of Adventure Park. They may be before P&Z on October 24th for a Preliminary plan review.

Powell CIC: Next Meeting: October 30, 2018, 6:00 p.m.

CITY MANAGER'S REPORT

We have our annual community bonfire this Saturday night from 6-8 pm. Usually the bonfire is winding down around 7:30 p.m., just before kickoff, so you have plenty of time to grab a hotdog and cider before the game.

And as a reminder, the next City Council meeting will be held on Wednesday, November 7th. We are moving it back a day because of the election.

OTHER COUNCIL MATTERS

There was none.

Mr. Lutz recommended amending Executive Session to add O.R.C. Section 121.22(G)(8) Economic Development.

EXECUTIVE SESSION: O.R.C. Section 121.22(G) (1) Personnel Matters and O.R.C. Section 121.22(G)(3) Imminent or Pending Litigation.

MOTION: Councilman Counts moved at 8:20 p.m. to adjourn into Executive Session pursuant to O.R.C. Section 121.22(G)(1) Personnel Matters, O.R.C. 121.22(G)(3) Imminent or Pending Litigation, and O.R.C. Section 121.22(G)(8) Economic Development. Councilman Lorenz seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Lorenz moved at 9:25 p.m. to adjourn from Executive Session into Open Session. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

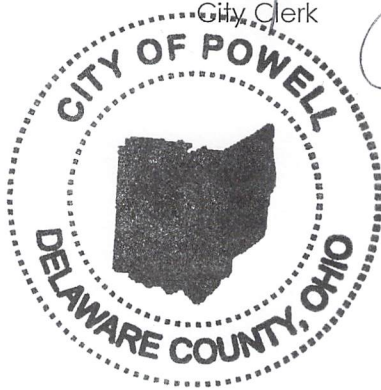
ADJOURNMENT

MOTION: Councilman Swartwout moved to adjourn the meeting at 9:25 p.m. Councilman Counts

seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned.

MINUTES APPROVED: November 7, 2018

Jon C. Bennehoof 11/9/2018 Karen J. Mitchell 11/9/2018
Jon C. Bennehoof Date Karen J. Mitchell Date
Mayor City Clerk



City Council

Jon C. Bennehoof, Mayor
Frank Bertone Tom Counts Brian Lorenz Brendan Newcomb Melissa Riggins Daniel Swartwout