

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53

City of Montgomery
City Council Business Session Minutes
September 5, 2007

Present

Cheryl Hilvert, City Manager
Terry Donnellon, Law Director
Susan Hamm, Clerk of Council
Frank Davis, Community Development Director
Wayne Davis, Assistant City Manager
Peter Hames, Finance Director
Bob Nikula, Public Works Director
Amber Morris, Recreation Director
Don Simpson, Police Chief
Matthew Vanderhorst, Customer Service Director
Paul Wright, Fire Chief

Council Members Present

Gerri Harbison, Mayor – 7:25
Mark Combs
William Niehaus
Lynda Roesch
Ken Suer
Todd Steinbrink

Council Member Absent

Barry Joffe

Council convened in Council Chambers at 7:00 p.m. with Vice Mayor Suer presiding.

Vice Mayor Suer noted that the Mayor Harbison will be later in arriving tonight, due to a business commitment.

ROLL CALL

Vice Mayor Suer asked that the roll be called.

The roll was called and showed the following Council Members present:

PRESENT: Combs, Suer, Niehaus, Roesch, Steinbrink
ABSENT: Harbison, Joffe

Vice Mayor noted that Mr. Joffe was absent due to a personal conflict. He asked for a motion to excuse Mr. Joffe.

Mr. Combs moved to excuse Mr. Joffe. Mr. Steinbrink seconded. City Council unanimously excused Mr. Joffe.

SPECIAL PRESENTATIONS

Vice Mayor Suer explained City Council was suppose to have a special presentation from Miami Valley Risk Management Association; however, Mr. Hammond has not arrived. He further stated that when Mr. Hammond arrives, City Council will work him into the agenda.

GUESTS AND RESIDENTS

Mrs. Crittenden, 9869 Forestglen Drive, read the following statement: “Some weeks ago I informed Council that Attorney General Marc Dann’s office advised me that draft documents are public, and should be available for inspection. However, on August 27, 2007, Ms. Hilvert tells me that Mr. Donnellon disagrees with that opinion. Ms. Hilvert informed me that since House Bill 9, which has some revisions to the Open Records Law, takes effect in September, Mr. Donnellon has indicated that he will “revist” the issue in the fall. At this time, the most recent Council minutes available to the public are from your March and April meetings. This does not even meet Mr. Donnellon’s interpretation of the law, which is that minutes be available in a timely manner. A reading of the revisions to the law suggests that the only changes that affect us are a requirement that all staff

54 undergo 3 hours of training in the Sunshine Laws each year, and that a Public Access Counselor will be
55 appointed by the Chief Justice of the Supreme Court to hear citizen complaints. Additionally, the law seems to
56 provide for suing and recovering fees by citizens. I fail to understand why this Council, apparently with support
57 of its attorney, keeps public information away from its citizens in a manner contrary to law.”

58
59 Vice Mayor Suer asked Mr. Donnellon if he would like to respond.

60
61 Mr. Donnellon explained that there a number of minutes that will be approved tonight to bring the minutes most
62 likely to current status which City Council has operated under, which is to try and have minutes up to the last
63 month’s meeting.

64
65 Mrs. Crittenden stated that they have been waiting months and this September.

66
67 Mr. Donnellon explained that City Council has had a lot of very long meetings over the last couple of months
68 with numerous comments coming out of those meetings and these minutes are a lot more voluminous than
69 minutes have been in the past. He further explained that in those court cases which have dealt with timeliness,
70 the court has never set a definitive timeline as to what is timely; the court has always ruled what is not timely.
71 He also explained that if Mrs. Crittenden read those court cases, she would see where the court is ruling on
72 minutes that are not prepared for six months, twelve months or a longer period of time. He continued to explain
73 that if the city got into a court case over this, the fact that the city has completed and approved minutes from the
74 first meeting in May, and this being the first meeting in September and that these minutes are up for approval
75 tonight, no one would feel that the city is not meeting the intent of the law to be timely. He continued to explain
76 that Ms. Lubow in the Attorney General’s office, is an attorney for the State of Ohio, just like he is the attorney
77 for the City of Montgomery, and often times attorneys have differing opinions. He continued to explain that
78 they had a long discussion relative to the open records law; he explained to her his opinion and she explained
79 hers. He continued to explain that he had explained to her the process that the city utilizes; how the city makes
80 tapes available to the people if they want them, how the city allows people to make corrections, and how the city
81 will even attach written corrections to the minutes and she thought that this was over and above what the city is
82 called to do. He continued to explain that what he told Ms. Lubow and explained to Ms. Hilvert was; as the city
83 starts getting into House Bill 9 with all the different things that the State Attorney General’s office wants to start
84 teaching on public records, he will gladly revisit this issue. He continued to explain that staff has attended
85 several sessions on House Bill 9 and what we are finding out is that at one session they tell you one thing on
86 public records and at another session there is a completely different interpretation on what you are suppose to do
87 with public records. It is very unsettled area that he would be very glad to revisit and he set the timeframe for
88 revisiting it this fall, as we get into some of this training. He continued to explain that he is not telling his client
89 to act illegally and he is not telling his client to hide minutes and not be timely. We are trying to get the job
90 done as quickly as we can and we will gladly revisit this issue. It is not a closed case; however, it is a closed
91 case tonight because we are not discussing it and making a decision tonight.

92
93 Mrs. Crittenden stated that the point she was making tonight is that draft minutes are what they want to see and
94 those minutes, according to the Attorney General’s office, are public and we are talking about public business
95 and you are keeping business from the hands of the public. She further stated that she does not understand how
96 elected representatives are listening to Mr. Donnellon and keeping public business away from its citizens.

97
98 **LEGISLATION FOR CONSIDERATION TONIGHT**

99
100 **Pending Legislation**

102 **New Legislation**

103
104 **A Resolution Authorizing the City Manager to enter into a Contract with Bob McDorman Chevrolet, Inc.,**
105 **for the Purchase of a 2008 Chevrolet Silverado, 2500 HD**

106
107 Mr. Niehaus moved to read the resolution by title only. Mr. Combs seconded. City Council unanimously agreed.

108
109 Mr. Niehaus read the resolution by title only and moved passage. Mr. Combs seconded.

110
111 Mr. Niehaus explained that if approved, this resolution would authorize the City Manager to enter into a contract
112 with Bob McDorman Chevrolet, Inc. for the purchase of one 2008 Chevrolet Silverado 2500 HD, extended cab,
113 pick-up truck. He further explained that the purchase of this vehicle is through the State of Ohio Cooperative
114 Purchasing Program and would replace a ten-year old Dodge Dakota. He also explained that the cost of the truck
115 would be \$27,301.98 and the funding is contained in the Capital Improvement Program Fund.

116
117 The roll was called and showed the following vote:

118
119 AYE: Combs, Niehaus, Roesch, Suer, Steinbrink (5)
120 NAY: (0)
121 ABSENT: Harbison, Joffe, (2)

122
123 **MINUTES**

124
125 Mr. Niehaus moved to approve the May 23, 2007 work session, June 6, 2007 business session, June 27, 2007
126 business session, and July 18, 2007 work session minutes. Mr. Steinbrink seconded. City Council unanimously
127 approved the minutes.

128
129 **ADMINISTRATION REPORT**

130
131 Ms. Hilvert explained that on September 18, 2007, the Public Works and the Law & Safety Committees of City
132 Council were scheduled to have a joint meeting to hear a presentation from the traffic engineer consultant;
133 however, he indicated that he going to be unable to attend that meeting. She further explained that staff did talk
134 with him about rescheduling to the October 16, 2007 meeting. She asked if the members of those committees
135 who were present would be interesting in rescheduling this joint meeting on October 16, 2007.

136
137 Mr. Niehaus, Mr. Combs and Mr. Suer indicated that they would be ok with rescheduling the joint meeting.

138
139 Ms. Hilvert indicated that it would not be very comprehensive if the consultant was not present. She further
140 indicated that the joint meeting of the Public Works and the Law & Safety Committees of City Council would
141 be cancelled and rescheduled for October 16, 2007 at 5:00 p.m. She also indicated that Mrs. Crittenden had
142 asked for information on this matter and asked Mrs. Crittenden if this notification would suffice or did she need
143 her to send her an email.

144
145 Mrs. Crittenden indicated that this would suffice.

146
147 Ms. Hilvert reported on the following items:

148

- 149
- 150
- 151
- 152
- 153
- 154
- 155
- 156
- 157
- 158
- 159
- 160
- 161
- 162
- 163
- 164
- Chief Wright had sent out some information on a program called “Smoke Showing” that is a class designed to help educate City Council members and City Managers about what fire department personnel go through in their day-to-day work. She further explained that this used to be put on by the Ohio Fire Marshall’s office in Columbus; however, they don’t have the funds to do that anymore, so the program has been picked up by the Hamilton County Fire Chief’s Association. She encouraged everyone to participate in the program and asked that they let Chief Wright know if they were interested in attending.
 - The City hosted a delegation of Ukrainian Mayors/City Managers who visited for a session on economic development, land use, planning, citizen participation and volunteerism in small US cities. The City has had a long standing support relationship with the Cincinnati/Kharkiv, Ukraine Sister Cities Project, since the early 1990’s and this activity was a part of a recent exchange to our area. Thanks to Gerri Harbison, Frank Davis, Chelsey Bridgewater, and Susan Hamm for their assistance in this activity.
 - In today’s Cincinnati Enquirer’s Hometown section there was a story featuring Montgomery restaurants.

165 Ms. Hilvert requested an executive session to discuss matters related to the purchase and sale of real estate,
166 imminent litigation, and labor negotiations.
167

168 **MAYOR’S COURT REPORT**

169

170 Vice Mayor Suer reported that the total Mayor’s Court collections for the month of August, 2007 were \$14,169.
171

172 Mr. Niehaus moved to accept the Mayor’s Court collections for the month of August, 2007. Mr. Niehaus
173 seconded. City Council unanimously accepted the collections.
174

175 **OTHER BUSINESS**

176

177 Vice Mayor Suer explained that City Council publicly stated that, should the park levy issue pass and the
178 initiative petition issue fail on the November ballot, that it does not intend to enforce that levy and would take
179 steps to remove it from the tax roles prior to collection. He suggested that City Council consider restating this
180 position formally in the form of a motion so that City Council’s intent on this matter is clearly understood by the
181 residents.
182

183 Mr. Niehaus noted that he did not have any comments, but he would like to make a motion.
184

185 Mr. Combs indicated that he concurred and did not think there was any need to delay because City Council has
186 made it very clear that this is just a matter of officially articulating City Council’s position for public records.
187

188 Mr. Niehaus moved to not enforce the park property tax levy if it passes and the initiative petition issue fails.
189 Mr. Steinbrink seconded. The voice vote was called and showed the following vote:
190

191 AYE: Combs, Niehaus, Suer, Steinbrink (4)
192 NAY: (0)
193 ABSTAIN: Roesch (1)
194 ABSENT: Harbison, Joffe (2)
195

196 Vice Mayor Suer explained that Mr. Niehaus made a motion that in the event that the park levy passes and the
197 initiative petition fails, the city would then not enforce the tax levy.
198

199 Mr. Donnellon explained that he gave everyone a copy of a document that he received regarding a notice of
200 protest, which was filed before the Board of Elections on Tuesday, September 4, 2007, by a group of ten citizens
201 in Montgomery objecting to the language of the initiative petition and asking that it not be placed on the
202 November ballot. He further explained that the group has cited most of the same comments he had made at the
203 previously two meetings relative to questions of the validity of the petitions and whether or not the petitions
204 would survive a challenge, which the city may have to undertake after the elections. He also explained that
205 these citizens have exercised their right to bring it as a protest to the Board of Elections. He continued to
206 explain that tomorrow morning the Board of Elections will set a schedule to hear the protest and mostly likely
207 the hearing will be within the next two weeks. The Board of Elections will then make a decision as to whether
208 or not the initiative petition will go forward to the November ballot. If the Board of Elections decides that it
209 does not go to the November ballot, then it will not appear on the ballot. He continued to explain that the Board
210 of Elections does not have the ability to make any changes or corrections in the initiative, or pass any comprises
211 that were proposed at the last meeting. The citizens raised the same question that he had raised, relative to the
212 multi-subject within the initiative, and raised the question that this violates the Ohio Revised Code that deals
213 with initiative petitions, which states that only one proposal of law maybe set forth in an initiative petition. It
214 also violates the City Charter and that it is in conflict with the current Charter relative to the powers of the Parks
215 and Recreation Commission. The group also brought up the question of this being extraordinary legislation that
216 usurps City Council's power to deal with legislation by taking away the power to revoke or repeal this
217 legislation at any time if the city should have any stumbling blocks with the acquisition of this property. He
218 continued to explain that it would not be advocated by the city. The city would take a neutral position; the city
219 has done it's administrative function, which was to pass the initiative petition onto the Board of Elections to put
220 onto the November ballot. It is to be advocated by the protest group. He continued to explained that he then
221 notified Ms. Pillich that the protest had been filed and the time of the hearing tomorrow morning, so that they
222 can act in time to attend and address their schedule relative to defending the protest before the Board of
223 Elections. He continued to explain that the Board is four members and those four members make the decision
224 and, if it is a tie vote, then the Secretary of State would cast the tie-breaking vote. If it passes by a majority of
225 those who are present and voting, then it is done at that point in time, unless someone files an appeal prior to the
226 elections. He continued to explain that the members of the Board are Tim Burke, George Vincent, Charles
227 Gerhardt, and Dan Radford. The city will be attending the hearing; however, the city's position is not to
228 advocate for or against, and the city's attendance is only to address any questions the board might have as to the
229 process. He indicated that he gave a copy to Mr. White, and he could give it to Ms. Pillich since she was unable
230 to attend the meeting tonight and she was not sure if she would receive a copy in the mail and he wanted to
231 make sure she received a copy before tomorrow morning.
232

233 Vice Mayor Suer asked that the special presentation from Miami Valley Risk Management Association be
234 rescheduled for the September 19, 2007 work session.
235

236 Mr. Steinbrink noted that congratulations needed to go out on the city's website for being nominated as one of
237 the best in the country.
238

239 Ms. Hilvert explained that this is a huge honor for Matthew Vanderhorst and the website team. She further
240 explained that City Council has heard the staff talking about HPO and the website is an example of HPO in
241 action; where employees throughout the organization and different levels of the organization contribute, with
242 Matthew as their leader, in the development of the website. She also explained that the announcement on the
243 best website will be made within the next few weeks.

244 Ms. Roesch asked how the city was nominated.
245

246 Mr. Vanderhorst explained that he submitted the city's website to the National Association of Government
247 Webmasters, which includes city and county webmasters throughout the United States.
248

249 Ms. Roesch noted that she signed up to receive the Bulletin by email.
250

251 Vice Mayor Suer indicated that Mayor Harbison was now in attendance.
252

253 Vice Mayor Suer asked if there was any further business to discuss in public session. There being none, he
254 asked for a motion to adjourn into executive session to discuss matters regarding the purchase and sale of real
255 estate, imminent litigation, and labor negotiations.
256

257 Mr. Niehaus moved that Council adjourn to executive session to discuss matters regarding the purchase and sale
258 of real estate, imminent litigation, and labor negotiations. Mr. Combs seconded. Motion carried unanimously.
259

260 The roll was called and showed the following vote:
261

262 AYE: Combs, Harbison, Niehaus, Roesch, Suer, Steinbrink (6)

263 NAY: (0)

264 ABSENT: Joffe (1)
265

266 Council adjourned into executive session at 7:33 p.m.
267

268 Council reconvened into public session at 8:36 p.m.
269

270 Mayor Harbison asked if there was any further business to discuss in public session. There being none, she
271 asked for a motion to adjourn.
272

273 Mr. Suer moved to adjourn. Mr. Steinbrink seconded.
274

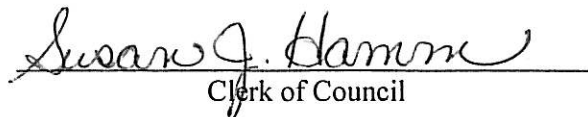
275 City Council unanimously agreed.
276

277 City Council adjourned at 8:37 p.m.
278

279

280

281


Clerk of Council