

MARION CITY COUNCIL REGULAR MEETING
City Hall – Council Chambers on January 14, 2019 7:30 PM

ROLL CALL: 9 members answered – Mr. Landon, Mr. Ratliff, Mr. Schaber, Mrs. Gustin Mrs. Cunningham, Mr. Huddle, Mr. Norris, Mr. Daniels, Mr. Schneider.

Absent -- Mrs. Gustin

With a quorum present, the meeting was called to order at 7:30PM.

Prayer led by Tom Toney of Family Life Church. Pledge of Allegiance completed.

SUMMARY OF PROCEEDINGS:

Mr. Daniels made a motion to approve the minutes of 12/10/2018 and 12/20/2018; Mr. Norris 2nd. Roll Call: Ayes – Mr. Landon, Mr. Ratliff, Mr. Schaber, Mrs. Blevins, Mrs. Cunningham, Mr. Huddle, Mr. Norris, Mr. Daniels. Nays – none

SUMMARY OF PROCEEDINGS FOR 12/10/2018 and 12/20/2018 APPROVED (8-0)

OLD BUSINESS:

Item 1. ORDINANCE 2018-77: ORDINANCE AMENDING EXISTING MARION CITY CODE SECTIONS 1153.034 AND 660.07(F) FINDING A REAL AND PRESENT NEED TO CONTROL NUISANCES WITHIN THE CITY OF MARION, OHIO, AS AMENDED (Legislation, Codes, and Regulations 3-0) (3rd Reading)

Mr. Landon explained that this ordinance addressed issues related to junk cars and parking.

Mr. Landon made a motion to approve; Mrs. Cunningham 2nd. Roll Call: Ayes – Mr. Landon, Mr. Schaber, Mrs. Blevins, Mrs. Cunningham, Mr. Huddle, Mr. Norris, Mr. Daniels. Nays – Mr. Ratliff

ORDINANCE 2018-77 HAS BEEN APPROVED (7-1)

Item 2. ORDINANCE 2018-79: ORDINANCE TO CHANGE THE NAME OF CASS AVENUE TO MARTIN LUTHER KING JR AVENUE (Streets and Sewers 3-0) (3rd Reading) (Public Hearing)

Public Hearing Opened

Tara Dyer (485 N. Grand Avenue) thanked city officials, and specifically Councilman Schaber, for their assistance in working through the street name change process. She also acknowledged Mr. John Harris, the petitioner, as well as the other residents of Cass Avenue who supported the change.

Public Hearing Closed

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Mr. Schaber made a motion to approve; Mrs. Cunningham 2nd. Roll Call:
Ayes – Mr. Landon, Mr. Ratliff, Mr. Schaber, Mrs. Blevins, Mrs. Cunningham,
Mr. Huddle, Mr. Norris, Mr. Daniels. Nays – none

ORDINANCE 2018-79 HAS BEEN APPROVED (8-0)

Item 3. **ORDINANCE 2018-80: ORDINANCE TO VACATE A PORTION OF ONE (1) 15' WIDE ALLEY LOCATED BETWEEN ST. JAMES STREET AND COURTLAND TERRACE PURSUANT TO ORC 723.041 RETAINING PERMANENT EASEMENT RIGHTS (Applicants, Steve and Marsha Adams) (Streets and Sewers 3-0) (2nd Reading)**

RESOLUTION 2018-80 HAS HAD A SECOND READING

Item 4. **ORDINANCE 2018-81: ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF MARION, BY REZONING 999 S PROSPECT STREET FROM AN I-2 (GENERAL INDUSTRIAL DISTRICT) TO C-5 (GENERAL BUSINESS DISTRICT) (Applicants, Joshua Hause) (Zoning and Annexation 3-0) (2nd Reading)**

ORDINANCE 2018-81 HAS HAD A SECOND READING

Item 5. **ORDINANCE 2018-83: AN ORDINANCE GRANTING TO MID-OHIO ENERGY COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO ACQUIRE, CONSTRUCT, MAINTAIN AND OPERATE IN THE STREETS, THOROUGHFARES, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF MARION, STATE OF OHIO AND ITS SUCCESSORS, LINES FOR THE DISTRIBUTION OF ELECTRIC POWER AND ENERGY TO PARTS OF THE CITY OF MARION AND THE INHABITANTS THEREOF FOR LIGHT, HEAT, POWER AND OTHER PURPOSES AND FOR THE TRANSMISSION OF THE SAME WITHIN, THROUGH OR ACROSS SAID CITY OF MARION, STATE OF OHIO, SUBJECT TO AND IN COMPLIANCE WITH THE CERTIFIED TERRITORIES FOR ELECTRIC SUPPLIERS ACT (OHIO REVISED CODE SECTIONS 4933.81 TO 4933.90). (Public Utilities 3-0) (2ND Reading)**

ORDINANCE 2018-83 HAS HAD A SECOND READING

NEW BUSINESS:

Item 1. **ORDINANCE 2019-01: ORDINANCE MAKING AN APPROPRIATION IN THE POLICE FUND FOR THE YEAR ENDING DECEMBER 31, 2019 (Finance 3-0) (1st Reading)**

Mayor Schertzer stated that the \$100,000 (from the general fund) goes towards adding an additional officer to the police department. He asked for suspension of rules to allow them to bring on officer sooner rather than later.

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Larry Heiser (1535 Lighthouse Ridge) addressed council stating that he believes that this \$100,000 is coming from a veto from a line item in Municipal Court. He states that it is clear in Ohio law that courts can mandate their budgets. His concern is that if council spends the \$100,000 for any other purpose now and the line item veto ends up in a court action, the city may have to come up with that \$100,000. He referenced a letter he said was received today by city officials from a law firm in Cincinnati.

Mayor Schertzer stated that Mr. Heiser seems to be privy to more information than council and administration. Council is being asked to appropriate \$100,000 to salaries in police. If something else happens, they will have to deal with it appropriately.

Law Director Russell stated that he met with Judge Ballinger on 01/02/2019 to determine a point of contact and she identified County Prosecutor Ray Grogan who was present in her office at that time. Mr. Grogan requested time to review the material and stated he would contact Law Director Russell to set up appointment. No call has been received. Late this afternoon, Mayor received a letter from a law firm in Cincinnati, which must be the same letter that Mr. Heiser is referencing. He intends to contact the firm and to talk about resolutions to the matter.

Mr. Huddle stated that he inquired and the average complete cost for a police officer is \$78,000 (salary and benefits). He suggested, and Mr. Landon concurred, that this serve as a first reading to allow time for more information to come forward.

Mayor Schertzer explained that the council could have overridden his veto and chose not to. He explained that the subject of \$10,000 Christmas bonus from the Court Assistance Fund is a separate issue. The \$100,000 line-item veto and the \$100,000 transfer to police salaries is all general fund dollars.

Mr. Norris stated that he would like to see some funds go towards hiring in the Fire Department.

Mr. Ratliff stated that he has a hard time separating the bonus money from any other money because he does not think it was spent wisely or correctly. He understands that this is a special fund and that she has what has been referred to as a "slush fund". The court is not completely self-funded and this body has oversight over the court's budget. When "slush fund" money is spent inappropriately (could have been spent on things to help the general fund) and it affects the general fund and the general fund must give money to that court; that is when he thinks it does become Council's business. Council passed a budget, the Mayor line-item vetoed \$100,000, judge wants \$100,000 back, and the Mayor wants a new police officer. He believes his decision is easy about where that money is better spent. He believes that it is better spent to protect the city than with the court who was not judicious with how they spent money last year or carryover for this year. He believes that adding a police officer is the best use of the money to protect the city.

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Mr. Daniels states there is always a reason or excuse to not hire a new police officer. It is his belief that there is nothing that the city is more desirous of than having a robust police force. The public wants increased police protection. He understands Mr. Heiser's argument and it is rational based on the information that he has. If the \$100,000 is appropriated from the general fund to a line item for police officer and if they find they must replace the money from the line item veto (which he believes that Mayor wisely put forward), then they will be at a deficit of \$100,000. The general fund is obligated to several things, including enormous repairs to the fire station. Floor expenses are \$50,000+ and there are other repairs that must be done. The budget they passed reflected many of these repairs. The City was notified today that they were awarded a \$500,000 grant under the critical infrastructure grant. These funds are designated to fix the fire house. That is money that will not have to be spent out of the general fund. He complimented Ms. Warr-Cummings, Mr. Ratliff, and Mayor Schertzer on their work towards getting that CDBG grant. He believes that they are in the position to move forward and to delay leads to the conclusion to not hire another officer. There are monies that will not come from the general fund for the fire house that were budgeted. Even if it would be determined that judge should get \$100,000 back, hiring one police officer will not cripple the general fund. He will vote for this ordinance, not out of animosity towards the judge, but because he feels that the city can afford it and that it is better to do it sooner rather than later. If council members believe the city is desirous of more police protection and see the benefit of that, council members will vote to suspend the rules and move this forward.

Mr. Huddle asked why the entire council was not notified that grant was approved. He was not aware, and he is the finance chair. Mayor Schertzer said that they received notification around 4PM this afternoon and that he had notified the majority leader prior to the meeting but did not contact everyone individually.

Mr. Schaber questioned whether the general fund was stout enough to keep a police officer on staff should the \$100,000 go back to courts. He does not want to see one hired and then laid off later.

Mr. Norris reiterated that he would like to see extra money moved to the fire department to hire additional fire fighters. Mayor Schertzer encouraged him to bring that forth to finance committee. He also referred to an upcoming resolution asking council to support the application for the SAFER grant that would result in the hiring of multiple fire fighters.

Mrs. Blevins asked about who would incur costs for Judge Ballinger's legal counsel. Law Director Russell stated that it is too early to tell. County Prosecutor Grogen would be paid out of county tax dollars.

Mr. Daniels stated that they were not going to announce receipt of the grant in the public meeting tonight, however they felt it was relevant within the context of this discussion. There is an outstanding spec and bid for floor repair and they did not want the receipt of grant to affect bidders' proposals. Receipt of

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this grant makes him less hesitant to approve the \$100,000 to the police department.

Mrs. Cunningham asked if that was a promise that the city will have that money to pay back. She wants fire and police supported 150%, however has some concern. She hopes that the entire city could support this.

Mr. Daniels stated that he cannot promise. Members can make the decision with some confidence that there is \$500,000 to offset a \$100,000 expenditure to the police department. Council needs to step forward on this. If members were to vote against the police officer, the reaction would be negative and swift.

Mr. Schaber stated that they did not budget \$500,000 in repairs to the fire department. The grant was a hope and wish and they were lucky that they got it. Mr. Daniels stated that the entire floor repair was included in the budget.

Mr. Kelley (Farming Street) said that he was looking at this from a tax payer perspective. The Law Director has put time in this and an out-of-town law firm has been hired. How expensive will this be and how will it be paid for? It is out of tax payer's pockets. Law Director Russell stated that it is too early to tell and many times it depends on who is successful in court. Until today, representation was being provided by the County Prosecutor and just recently replaced by the out-of-town firm. Mr. Kelley stated that he believes that tax payer monies are being used for an argument that needs to be settled without outside influence. The Judge should sit down with Council and administration and get it figured out. That is what should be happening. As a tax payer, that it is what he wants to have happen. He supports hiring a police officer, however he is opposed to the wasteful spending on a fight to put this money in one place or another. Elected officials needs to sit down together and get it worked out without involving an outside counselor or anything that costs tax-payers money.

Mr. Daniels asked for some clarification. Chief Collins said that the police department paid out about \$170,000 in overtime. Some of that was reimbursed. Chief Collins stated that having an additional office would reduce departmental overtime.

Mr. Ratliff made a motion to suspend the rules; Mr. Daniels 2nd. Roll Call: Ayes – Mr. Landon, Mr. Ratliff, Mrs. Blevins, Mr. Daniels. Nays – Mr. Schaber, Mrs. Cunningham, Mr. Huddle, Mr. Norris

RULES WERE NOT SUSPENDED (4-4)

ORDINANCE 2019-01 HAS HAD A FIRST READING

Item 2. ORDINANCE 2019-02: ORDINANCE REQUIRING THE REGISTRATION OF CONSTRUCTION CONTRACTORS WITHIN THE CITY OF MARION (Legislation and Codes 3-0) (1st Reading)

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Mr. Landon explained that this has been discussed in committee for a lengthy period and included discussion of building and zoning codes. This ordinance addresses a first step of registering contractors within the City of Marion and is a compromise between a full building code and enforcement department and doing nothing. It provides some consumer protection and moves the City forward.

Mrs. Cunningham stated that she had a constituent ask, “wondering if it is OK for the city to require more than the state for workers compensation?”

Mr. Landon stated that he does not think it is OK. If that person has certain approval from the state, he does not believe that the ordinance should override that.

Mike Neff (851 E. Center Street) said that he does not think that registration will affect the public or their safety which should be the focus of this council's efforts. He believes that the idea has been a distraction from the immediate problem of code enforcement. If the council is ready to move forward with a proactive approach for true change, the idea of contractor registration will not serve that purpose. Protection for landlords, property owners, house builders, and contractors should not be the focus the citizens of the community. If Council needs a reason for change beyond registration, look no further than a house on Elm Street and one on Tyler that both suffered devastating fires.

Paul Anderson (410 Reed Avenue) asked for some clarification on workers compensation. Mr. Landon replied whether a contractor should be required to have more of a worker's compensation coverage and he thinks that the city should not do that. The city should not enforce a stricter requirement than the state already does. Mr. Anderson agrees that this is a first step. If they have nothing to hide and you do good work, what is the big deal? When the city did the code back in the 90s, it was not published correctly, and public was not educated. Customers want something in Marion.

Mr. Schaber stated that the question was related to sole proprietors. It does not clearly exempt sole proprietors, but sole proprietors are not required to have workers compensation.

Law Director Russell said that additional clarification language will be added to subsection six, code numbers, and additional suggested clean up before second reading.

Mr. Daniels stated that there are two reasons that a sole proprietor should hold a worker's compensation policy. It is relatively inexpensive if they are not turning in a payroll. You can hold a certificate, turn in no payroll., however should you be injured you will not have wage replacement. There are those who are willing to risk that and hold a policy only. The reason for the policy is so that the city does not have an argument between whether a contractor is a contractor or an employee of a homeowner. Magically when someone gets hurt there are all sorts of things that come out of their mouth as to what they are in order to cover the claim. It would very easy for a sole proprietor to claim that they were an employee of the person that they were contracting

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with thus making the homeowner liable for their injury. If the contractor holds a certificate, there is no doubt as to what that argument is. Also, sole proprietors might work 95% of their time as a sole proprietor. In the one event that they have an employee help them out for one day on a job, they are not going to run out and get workers compensation because they are going to hire this person for one day. They are trying to avoid that as well. Under that circumstance, the homeowner is responsible not only for the contractor but also for the helper. He thinks a certificate policy is \$15 if they are not turning in wages and that would be a percentage if they are turning in wages, based on experience (percentage based on the base rate). The most anyone would be obligated to pay would be the policy fee of \$15 to hold a certificate which indemnifies their customers.

Bart Wolfe (238 Merchant Ave) believes that this is a good start to do something about it. I wish more contractors would come to meeting. Several of them have commented that they would rather a building code enforcement than have this. He feels that council should contact them and talk to them. Some have said that they will not come into Marion and work. His fear is that it will have a reverse effect of that they want. The city is still going to have subpar contractors doing some of this work. The people who own rentals will be able to do their own work. His biggest concern is not to have these people doing the work the right way and it does not hurt to have someone coming in to look at how they did the work. A house that someone flips has a fire and someone has a fire, it's not worth it. They had the discussion in committee meeting about Galion. Galion has had a building code enforcement department for over 30 years and would be glad to talk to anyone who would like to talk to them. They could talk with council about registering contractors vs. building code enforcement. They already have building code. The state of Ohio has a building code, and everyone is expected to follow it. He is only asking for enforcement of what is already there.

ORDINANCE 2019-02 HAS HAD A FIRST READING

Item 3. ORDINANCE 2019-03: ORDINANCE AUTHORIZING A CHANGE ORDER WITH H & H ENVIRONMENTAL FOR ASBESTOS ABATEMENT SERVICE AND DECLARING AN EMERGENCY (Jobs and Economic Development 2-0) (1st Reading)

Mr. Schaber explained that Rose Cottage at Sawyer Ludwig Park was put out for an asbestos abatement bid for up to \$5,000 and came back in at \$18,000, so they are increasing amount to move the project forward.

Ms. Warr-Cummings explained that she believes that they are still on budget to complete the entire project proposed in grant.

Mr. Schaber made a motion to suspend the rules; Mr. Norris 2nd. Roll Call: Ayes – Mr. Landon, Mr. Ratliff, Mr. Schaber, Mrs. Blevins, Mrs. Cunningham, Mr. Huddle, Mr. Norris. Nays – none. Abstain – Mr. Daniels.

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Mr. Schaber made a motion to approve; Mr. Landon 2nd. Roll Call: Ayes – Mr. Landon, Mr. Ratliff, Mr. Schaber, Mrs. Blevins, Mrs. Cunningham, Mr. Huddle, Mr. Norris. Nays – none. Abstain – Mr. Daniels.

ORDINANCE 2019-03 HAS BEEN APPROVED (7-0)

Item 4. ORDINANCE 2019-04: ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF MARION, BY REZONING THE WEST HALF OF THE PARCEL AT 111 SUPERIOR STREET/717 DELAWARE AVENUE FROM AN R-1C (SINGLE-FAMILY DISTRICT, HIGH DENSITY) TO C-1B (COMMERCIAL NEIGHBORHOOD SHOPPING DISTRICT) TO MATCH THE EAST HALF (Zoning and Annexation 3-0) (1st Reading)

ORDINANCE 2019-04 HAS HAD A FIRST READING

Item 5. ORDINANCE 2019-05: ORDINANCE AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC SAFETY TO EXTEND SPEC AND BID FOR THE REPAIR OF THE BAY FLOOR AT FIRE STATION #1 AND DECLARING AN EMERGENCY (Finance 3-0) (1st Reading)

Mayor Schertzer reiterated that the city has been awarded a CDBG critical infrastructure grant for \$500,000. Receipt of this grant will allow the city to additional work to the 107-year-old fire house. The bay floor is just one segment.

Mr. Huddle made a motion to suspend the rules; Mrs. Cunningham 2nd. Roll Call: Ayes – Mr. Landon, Mr. Ratliff, Mr. Schaber, Mrs. Blevins, Mrs. Cunningham, Mr. Huddle, Mr. Norris, Mr. Daniels. Nays – none

Mr. Huddle made a motion to approve; Mrs. Cunningham 2nd. Roll Call: Ayes – Mr. Landon, Mr. Ratliff, Mr. Schaber, Mrs. Blevins, Mrs. Cunningham, Mr. Huddle, Mr. Norris, Mr. Daniels. Nays – none

ORDINANCE 2019-05 HAS BEEN APPROVED (8-0)

Item 6. RESOLUTION 2019-01: RESOLUTION FOR THE CITY OF MARION, OHIO AUTHORIZING THE DIRECTOR OF PUBLIC SAFETY TO EXECUTE THE APPLICATION FOR THE ASSISTANCE TO FIREFIGHTER GRANT APPLICATION TO INCREASE STAFFING THROUGH THE STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE (SAFER) GRANT (Finance 3-0) (1st Reading)

Mayor Schertzer explained that this is a competitive grant that the city has received in past years. If the city receives it this time, the grant will allow the addition of 2+ firefighters. The city will need to make sure that they can afford to pay firefighters in future years after grant ends. The grant is typically a three-year grant and sometimes can be stretched out a little bit longer. The auditor's office has gotten very proficient in using the grants to their best benefit.

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Mr. Daniels made a motion to suspend the rules; Mrs. Cunningham 2nd. Roll Call: Ayes – Mr. Landon, Mr. Ratliff, Mr. Schaber, Mrs. Blevins, Mrs. Cunningham, Mr. Huddle, Mr. Norris, Mr. Daniels. Nays – none

Mrs. Cunningham made a motion to approve; Mr. Norris 2nd. Roll Call: Ayes – Mr. Landon, Mr. Ratliff, Mr. Schaber, Mrs. Blevins, Mrs. Cunningham, Mr. Huddle, Mr. Norris, Mr. Daniels. Nays – none

RESOLUTION 2019-01 HAS BEEN APPROVED (8-0)

Item 7. RESOLUTION 2019-02: RESOLUTION CONFIRMING THE APPOINTMENT, BY THE MAYOR, OF AN INDIVIDUAL TO SERVE AS A MEMBER OF THE AIRPORT COMMISSION

Mayor Schertzer stated that they are requesting the appointment of Lew Lause, a former small business owner and a licensed pilot, to an unexpired term on the Airport Commission. They have had a recent resignation to avoid the possibility of a conflict of interest.

Mr. Huddle made a motion to suspend the rules; Mrs. Cunningham 2nd. Roll Call: Ayes – Mr. Landon, Mr. Ratliff, Mr. Schaber, Mrs. Blevins, Mrs. Cunningham, Mr. Huddle, Mr. Norris, Mr. Daniels. Nays – none

Mr. Huddle made a motion to approve; Mrs. Cunningham 2nd. Roll Call: Ayes – Mr. Landon, Mr. Ratliff, Mr. Schaber, Mrs. Blevins, Mrs. Cunningham, Mr. Huddle, Mr. Norris, Mr. Daniels. Nays – none

RESOLUTION 2019-02 HAS BEEN APPROVED (8-0)

OTHER BUSINESS:

Mr. Ratliff announced that he had disconnected his home landline. His point of contact will be his cell phone at 740-802-0277.

Mayor Schertzer announced a schedule of community events for Martin Luther King Jr. Day, including: 01/20 at 4 PM at Channel 39; Peace and Freedom Breakfast at the May Pavilion on 01/21 at 9AM; Martin Luther King walk that starts at park (5PM) and ends at City Hall (at 6PM); Joel King will speak at Mt. Zion Church at 7:30PM.

MATTERS NOT ON THE AGENDA

COMMITTEE MEETING SCHEDULE:

Committee meetings were announced as follows:

Finance --- 01/22/2019 at 6:30 PM -- Rick Huddle, Chair

Jobs and Economic Development – 01/28/2019 at 7:00 PM (prior to council meeting) – Jason Schaber, Chair – CanDo and Downtown Marion

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Legislation and Codes – 01/22/2019 at 6:50 PM – Robert Landon,
Chair –discussion requested by Kevin Norris regarding liquor license
on N. Main Street

Municipal Services, Parks, and Recreations – 01/22/2019 at 6:40 –
DKMM ratification and job descriptions

Regional Planning – 01/23/2019 at 7:30 PM at the Marion County
Building – Kevin Norris, Chair

Streets and Sewers – 01/22/2019 at 7:00 PM – Jason Schaber, Chair
– permissive auto tax

Zoning and Annexation – 01/22/2019 at 7:10 PM – Leslie Cunningham
– 2 annexation petitions

No other committee chairs called meetings.

With no further business to come before Council, Mr. Schneider adjourned
the meeting at 8:51 PM.

Todd Schneider
President of Council

Tarina R. Rose
Clerk of Council