



CITY OF WORTHINGTON
Worthington City Council Minutes
September 10, 2018

6550 N. High Street
Worthington, Ohio
43085

CALL TO ORDER – Roll Call, Pledge of Allegiance

Worthington City Council met in Regular Session on Monday, September 10, 2018, in the John P. Coleman Council Chambers of the Louis J.R. Goorey Municipal Building, 6550 North High Street, Worthington, Ohio. President Michael called the meeting to order at or about 7:30 p.m.

ROLL CALL

Members Present: Rachael R. Dorothy, Douglas Foust, Beth Kowalczyk, Scott Myers, Douglas K. Smith, and Bonnie D. Michael

Member(s) Absent: David Robinson

Also present: City Manager Matthew Greeson, Assistant City Manager Robyn Stewart, Director of Law Tom Lindsey, Director of Finance Scott Bartter, Director of Service & Engineering Dan Whited, Director of Planning & Building Lee Brown, Director of Parks and Recreation Darren Hurley, Chief of Police Jerry Strait, Chief of Fire John Bailot, Clerk of Council D. Kay Thress, and Assistant City Clerk Ethan Barnhardt

There were 4 visitors present.

PLEDGE OF ALLEGIANCE

President Michael invited all to stand and join in reciting the Pledge of Allegiance to the flag.

PUBLIC HEARINGS ON LEGISLATION

President Michael declared public hearings and voting on legislation previously introduced to be in order.

Ordinance No. 36-2018

Amending ordinance No. 41-2017 (As Amended) to Adjust the Annual Budget by Providing for an Appropriation from the Capital Improvements Fund Unappropriated Balance to Pay the Costs of the Municipal Building Roof Project (680-18) and the Fire Station Roof Project (648-17) and all related

Expenses and Determining to Proceed with said Projects

The foregoing Ordinance Title was read.

Mr. Greeson noted that this Ordinance has been brought back to Council because the roof projects had to be re-bid since there were originally no bids submitted.

Mr. Whited explained that this is a result of re-bidding the roofing project at the Municipal Building and the Fire Station. Recognizing that some of the siding on the Municipal Building is in poor shape, the replacement of that was added to this bid. The total bid for the Fire Station was approximately \$238,000 and the Municipal Building was \$200,880. The selected contractor was E. Lee Construction and he would like to recommend hiring them. We do not know when this project will begin but, depending upon the weather it may be early in the springtime. Generally speaking the roof should have a 30-year life cycle and the cement board siding should have a life cycle upwards of 50 years.

Ms. Dorothy asked if this will prevent the leaking and water that is currently coming into the building. Mr. Whited replied that is correct. When asked by Ms. Dorothy if there would be any insulation in the roof installed as part of this project, Mr. Whited responded that insulation is not included in this project.

Mr. Foust asked what the duration of the project would be. Mr. Whited replied approximately 3 months to complete both projects. Mr. Foust referenced the work being done at the Worthington Recreation Center and questioned whether that project had taken longer than expected. Mr. Whited confirmed the project has taken longer than expected.

MOTION Mr. Foust moved, Mr. Smith seconded a motion to remove Ordinance No. 36-2018 from the table.

There being no additional comments, the motion carried unanimously by a voice vote.

MOTION Mr. Myers moved, Ms. Dorothy seconded a motion to amend Ordinance No. 36-2018 to have the appropriation in the amount of \$483,000 and awarding it to E. Lee Construction.

There being no additional comments, the motion carried unanimously by a voice vote.

There being no additional comments, the clerk called the roll on Ordinance No. 36-2018. The motion carried by the following vote:

Yes 6 Kowalczyk, Dorothy, Foust, Smith, Myers, and Michael

No 0

Ordinance No. 36-2018 was thereupon declared duly passed and is recorded in full in the appropriate record book.

REPORTS OF CITY OFFICIALS

Discussion Item(s)

- Regulation of Massage Establishments

Mr. Greeson detailed how the two discussion items tonight are policy issues that have been researched by staff. The first discussion item regards the regulation of massage establishments. This is an area of concern not only for our community, but others in central Ohio.

Mr. Lindsey identified the ordinances included in the packet as being from the City of Westerville, the City of Hilliard and the City of Columbus. The principal difference between the Westerville and Columbus ordinances is that the City of Westerville made the decision to prohibit “relaxation” massages that are not therapeutic massages and are not otherwise licensed by the State of Ohio. Licensed massages include medical massages, massages in connection with cosmetology, and others to be licensed and registered under state law. Westerville imposed a moratorium for a period of time while investigating the topic due to concerns about massage establishments involved in the human trafficking trade. After their study was completed, the Westerville City Council made the decision to prohibit all forms of relaxation massage.

The Columbus model does not prohibit relaxation massages, but rather licenses and regulates them. The ordinance in Columbus and Hilliard provide an exception for any of the massage establishments and therapists who are licensed by the state – the focus is on those that are unlicensed by the state. Those who are unlicensed by the state are required to register and obtain a license from the City of Columbus, providing information on the persons employed by the establishment.

The principal policy question for the Worthington City Council is to decide if there is interest in adopting regulations on massage parlors and to decide whether to prohibit or permit relaxation massages with regulations through a licensing system.

President Michael asked if there is a definition of relaxation massage. Mr. Lindsey said there is not a definition of a relaxation massage. The state has a definition for therapeutic massage for purposes of state licensing, but all of the ordinances define massage in generic terms of rubbing, touching, pressure, and other criteria. President Michael said a company like Massage Envy offers a relaxation massage. She is confused because that is a company where everybody has to be licensed. Mr. Lindsey said it is more a difference between state licensed massages and non-state licensed massages.

Mr. Lindsey discussed how there are other tools available. The City of Columbus does pursue nuisance actions when there is sufficient evidence that prostitution is occurring in

an establishment. That requires undercover officers to go in to obtain that evidence and determine what is going on. That is a civil nuisance action in Franklin County Environmental Court. Under state law that action allows for the closure of a business for up to a year. Working with the Columbus City Attorney's office we can follow that approach assuming we would have the necessary evidence to make that case. The Franklin County Sheriff's office has provided their officers as the undercover agents in those instances.

Ms. Dorothy questioned how this addresses human trafficking. Mr. Lindsey responded that the attempt to provide regulation of the establishment and the requirement of photos and information as to who works in those establishments provides the basis to determine whether there are people there who are not registered. For the most part, trafficking activity is more often found in unlicensed establishments. Those who go through the trouble of getting licensed may be doing so for legitimate massage business activities and not for prostitution or other illegal sexual activities. For the traffickers, it limits the locations that it can occur. In and of itself this does not address trafficking, but it makes it harder for trafficking to occur in the City of Worthington. As more surrounding cities implement similar ordinances, these businesses look to go elsewhere. Having an ordinance would at least even the playing field. Ms. Dorothy observed that on paper we may have licenses, but otherwise we do not know what services are being provided unless our people are going into the establishments to see who is providing services. Mr. Lindsey responded that this is true for both licensed and unlicensed facilities. Until receiving tips or having undercover in place, it is not known what is going on in these establishments, but it is easier to identify and establish activity.

Mr. Lindsey noted that while this is set-up as a regulatory, licensing ordinance, there is also a zoning component where this activity could be located. The City of Gahanna exclusively deals with the issue through conditional use zoning of massage establishments only as to licensed massage therapists. They do not have a separate licensing ordinance.

Chief Strait detailed how on the enforcement side, the Police Department receives constituent phone calls about these types of issues taking place and asking what will be done about it. He described how the Police send investigators in and utilize outside resources including the Central Ohio Task Force and the FBI. We are in a competition with these individuals at a national level who are rotating and not staying in an area for a length of time. They bring young ladies in and they are housed in a location where they are bathing, eating, and are essentially slaves at that location. Without a licensing process it is difficult to know who is in there which is compounded by their rotating through places. It's a difficult operation to deal with. This most recent event has been looked at since June and we had some great partners with us. We are not going after the ladies who are being victimized, so we try to backtrack to the johns or the individuals who are housing these women. It is a cash only business and they are not reporting taxes so there is not really a tracking system for our white-collar investigators. By having a licensing ordinance, it is possible to have some idea of who is working in these businesses. Chief Strait explained that they would still need to be going out and doing inspections to establish who is working in these facilities. There are still ongoing cases and in the most recent one we quickly got

the two victims out, passing them to the Salvation Army and interpreters were brought in by some federal agencies to communicate with these individuals. We have not charged the primary two individuals, and he hopes that we can do that.

Ms. Kowalczyk asked if there have been other incidents other than the two previously mentioned. Chief Strait replied there are locations in the City and around Central Ohio, but there are no other events that they are aware of. There have been some additional startups since this investigation began, but these are the only two for Worthington that we have actually made charges or entry on. Ms. Kowalczyk followed-up by asking how many businesses may be affected by this licensure change. Mr. Lindsey responded that we do not know how many may be affected because the City does not have a business registration requirement that would identify every location. Other than using a phonebook or drive by looking at signs, we do not have the ability to know unless they had to come in for some sort of zoning approval in which they indicated the nature of their business. Mr. Brown added that there is a change of occupancy permit. If a tenant moves out and another moves in then they are required to work with the Planning and Building Department for that permit. Typically, in the commercial district we do allow for licensed massages. If you are not licensed by the state, we do ask it to be a conditional use that goes before Municipal Planning Commission for approval. Some of the changes in occupancy do not happen until the annual fire inspection.

Mr. Foust observed that the Columbus and Hilliard ordinances include the requirement for multiple pieces of identifying information and asked if we had a similar process in place, would it have been enough to preempt the human trafficking component. Chief Strait said that his personal belief is that these individuals do not want to be known and these individuals are kept remote. He believes that something like that would have benefited the agency and long term would have benefited these ladies by not having to be subjected to this.

President Michael asked if this could possibly shift the problem from one location to another location without this type of regulation. Chief Strait responded that is a possibility. It would be ideal if there were a broader effort at the state or national level so that we can be on the same page tracking these individuals. President Michael asked if there should be something in the ordinance to keep the City's opportunities open to collaborate with other state and local agencies. Chief Strait replied that he supported anything we could do to help on that level.

Mr. Myers inquired if any of the local ordinances have been tested in the courts yet. Mr. Lindsey stated that he is unaware of any challenge to the ordinances. Mr. Myers asked if we know how day spas, such as Massage Envy, operate and if the services are always performed by licensed therapists. Mr. Lindsey replied he does not know. Mr. Myers said that his understanding is that a person does not need a massage license to open a massage franchise. This ordinance in Worthington would shut that business down. Mr. Lindsey said that the situation in Westerville where the business owner was not licensed but the workers were, the owner stopped personally providing services. Mr. Myers said that if he were someone that had invested in a franchise and this ordinance comes along, he could

see it being challenged. He wants to make sure our net is not so wide that we put legitimate businesses out of business. He cannot make an informed decision until he knows more about how these businesses operate. We are painting all non-therapeutic massage parlors with the same brush if we are too broad in our regulation. Mr. Lindsey replied that he understands the concern there and would inquire further into challenges of these ordinances. Mr. Myers asked if we could also call these big chain day spas to find out how they operate.

Ms. Dorothy questioned whether individuals working towards getting a license must go through a probationary period or apprenticeship. Mr. Myers said that he assumes that Columbus got the Medical Board's feedback and these people are already regulated by the Medical Board. Mr. Lindsey stressed that is why most of these ordinances are written to regulate only the unlicensed businesses. We are requiring a license and leveling the playing field because all people who do massages must either have a state license or a local license. Mr. Myers explained that he wants to make sure we are not running afoul of the Medical Board's regulatory scheme because we would then be granting a lesser license to a lesser individual and that sounds like a matter of statewide concern. This is very similar to other statewide pieces of legislation that begin at the municipal level until it reaches critical mass and the General Assembly acts.

President Michael asked if we would be requiring all the businesses to provide copies of licenses or a form saying all of their employees are licensed and how do we know who is licensed. She asked if the ordinance will require everyone who does massages in our community to report. Mr. Lindsey replied that it could be informational reporting to verify that they are licensed under state licensing. By definition we would be only requiring for those who are not licensed and the enforcement of the licensed activities would fall under state law. He stated that staff will do additional research into the industry because there are legitimate businesses we do not want to put out of business. In Westerville, they did not have any except for the one individual who was not licensed and they were comfortable with the complete prohibition of unlicensed massages in the community.

Mr. Myers clarified that persons without a state license could administer non-therapeutic massages if they had a Columbus license and Westerville does not offer a local license. If we allow a local license where we require pictures and a background check it is different than a license in the regulatory sense. Mr. Lindsey said that it would not be based upon skills, but rather upon the individual and standards of cleanliness. Mr. Myers concluded that it would be less of a license and more a registration.

President Michael asked if there was a consensus of Council to move forward on type of ordinance on this topic. Ms. Dorothy stated yes in light of two situations of human trafficking that have been caught.

Mr. Foust said that if there was some kind of national board or some way of looking outside of Columbus or Ohio it may be helpful to look at trends across the county and in other states. Ms. Dorothy agreed, and she wanted to see if there was anything else that had been used that would be useful and works.

- Transmittal of Proposed Carryover Fund Balance Policy and Investment Policy

Mr. Greeson explained that the Finance Department staff has been conducting updates of the City's financial policies. These policies are important to the life of the city. The Investment Policy has traditionally been issued as an administrative regulation, but we wanted to move it to a Council adopted policy that goes through a review. Our General Fund Carryover Fund Balance is always a topic of discussion and our policy requires it to be reviewed and updated every five years. Given the recent discussion of the fund balance, we decided to update it this budget cycle. This puts it out to Council and into the public domain to start a discussion.

Mr. Bartter explained that the Investment Policy is cookie cutter Investment Policy and not a significant change from the policy last adopted in 1997. The major change is that we are now referring to the Ohio Revised Code Section 135 as opposed to copying and pasting the language into the policy. This creates an evergreen effect, if they change the Ohio Revised Code then our policy is automatically updated.

The Carryover Fund Balance policy has some substantial changes. We benchmarked what other AAA rated cities were doing. We also looked at what would be sustainable given our revenue sources and their fluctuations. What is being presented is a policy that has a range of between 35-50% for the general fund balance. There is a transfer mechanism where the amount over 50%, 50% of that is transferred to the CIP. There are also actions included if the fund balance fell between different thresholds if need be. Finally, we are moving from using the cash balance to the unencumbered balance. It would be ideal not to use dollars that are encumbered for a use.

President Michael asked what the current percentage for the fund balance is. Mr. Bartter replied we are at approximately 56% of prior year expenditures. He explained it is difficult to look at the balance on a month to month basis. It is currently spiked due to an August property tax distribution and once that runs out throughout the rest of the year, it will end up being a little lower.

Mr. Myers asked if this determination would be made at the end of the fiscal year. Mr. Bartter said that is correct, if we ended up over 50% we would come back with an appropriation transfer for the 50% over 50% to the CIP. Mr. Myers asked if there was anything in the policy that would prevent us from working on a deficit operating budget. Mr. Bartter replied that was correct. Mr. Myers asked if deficit spending would be projected out. Mr. Bartter responded that the forecasts would identify forthcoming issues, but one of the real reasons for doing this is we do not know what will happen year to year with our income tax revenue which makes up 74% of our general fund revenue and three businesses make up 13% of our general fund revenue. Mr. Myers posed a hypothetical scenario where there are several years we are 50% and transferring funds to the CIP with some goal in the future. He asked if there would be a way to take that extra money and segregate it for a purpose even if it is not spent that year. Mr. Bartter said that there would be a way to do that. He replied that as an example, there is an upcoming 27th pay that will spike our payroll which happens every 11 years. He is proposing in this policy to establish

a subfund of the general fund to pay for that additional pay. Theoretically we can create a separate subfund for any designated purpose that the Council decides. Mr. Myers expressed that he likes the concept of saving for a specific purpose. It would be nice to have that flexibility to save for a specific purpose, particularly one-time expenditures.

President Michael expressed her thoughts as someone who has been through everything with the fund balance, she is on the cautious side of what we do and wants to protect the fund balance. With our funding sources being so volatile from being income tax based, it is very scary from time to time.

Mr. Myers asked when was the last time that we reviewed fees. Mr. Greeson replied that has been discussed as part of this budget process and will be tackled. He explained that it is becoming more critical and we need to develop a more systematic way to calculate fees and consciously determine the amount we want to subsidize things. Given the increased reliance on income taxes and the loss of other funding sources, we should consider some approaches to financing capital improvements that don't involve the 20% of income taxes. Additionally, in upcoming legislative cycles talking about advocating for things such as permissive license tax flexibility.

Ms. Dorothy wanted to recap that one of the reasons we are doing this is because there have been ups and downs in our general fund and revenue. We have raised the property tax once and income taxes twice since 2004. Our policy is that we are in a good place if the general fund balance is between 35-50%, but we are still good between 25-35%. Mr. Bartter replied that the financial action plan begins when funding falls under 35%. In the draft policy there are steps that may be taken if we fall below the 35%. Ms. Dorothy detailed the action plan steps.

President Michael said to keep in mind with regards to fund balance is our bond rating. She watched our bond rating go down when the fund balance was too low, and we worked hard to bring the fund balance back up to improve our bond rating. It went to AA to AAA which made it more economical for us to borrow. Part of this is how low to go without adversely impacting our bond rating.

Michael Bates – 6560 Evening Street

Mr. Bates brought up how he proposed the creation of a citizen's budget advisory panel in October last year. To the best of his knowledge, no action was ever taken on that suggestion. He was asked by President Michael to do research into other municipalities in Ohio doing something similar and he responded to President Michael via email also in October of last year. His point, as Council has discussed tonight, is that there is a lot of asks in terms of what to do with tax dollars and it would be good to have a broad discussion with the citizenry on this item. He did speak with Mr. Bartter, acknowledging that he has done his homework and is very knowledgeable. However, his question after speaking with Mr. Bartter is whether 50% is the right number and should the citizens have some discussion about this and what they want to do with these dollars. He appreciates Council's desire to be frugal, but there are lot of things that need to be done in this city. If we continue

to neglect infrastructure, those issues will compound over time creating future costly maintenance issues. There are also social services that need to be supported in addition to ongoing government operations. His point is that he wanted to bring back up the idea of putting a citizen advisory board together, which does not have to be a standing board, it could be biannually, or during the budget process.

John Rist – 285 Bryant Avenue

Mr. Rist wanted to make a couple points and ask several questions tonight. He is curious whether there is a concern here about moving the policy because of concern about where the economy is going to move, or if there has been any discussion with the major employers in the City about their overall financial picture. What are they looking at in their outlook.

Mr. Greeson replied that Mr. McCorkle and Mr. Bartter are meeting with employers and talking to them as part of the five-year forecasting process. That will be presented in early October. The policy document is rooted in what we think is long term best practice for the City.

Mr. Rist said that income taxes appear to have grown 24% since 2011 and in 2017 you spent 92% of the budgeted amount. The trend is showing that same pattern for the current fiscal year that is halfway through. There is another factor that has not been discussed as part of this policy and that is the deferred maintenance that is being incurred. There is a cost to deferring maintenance every year that is being incurred through increased labor and material costs. By deferring that it adds costs that the Council needs to be aware of and should be factored into the budget process and when thinking about fund balances and transfers to the CIP.

He would like to propose a change to this policy because he believes the threshold that has been articulated is very high for a transfer to the CIP. He proposes that at the 35% level, 50% is transferred to CIP and 100% is transferred at 50%. When looking at the 2017 fund balance, if you implemented that kind of change you would be transferring \$2.2 million to the CIP. At the 50% it would be \$500,000. Under the proposal being considered, you would transfer only \$250,000 at the 50% fund balance level. The threshold is extremely high before transferring any dollars into the CIP and maybe you could adjust that downwards to a level that gives more money to the CIP.

Ms. Kowalczyk requested more information on the citizen action panel and citizen involvement into the budget discussions. She stated that she believes it is a good discussion to have about how the budgets are made up and how to prioritize the budget. President Michael replied that by fall most of the budget is already in place. She believes if we are going to have discussions like what has been proposed, it should be done at the beginning of the year. Ms. Kowalczyk commented that it could be something we could pursue for next year's budget process and could be done early in the year.

Information Item(s) – Financial Report – July and August 2018

Mr. Bartter provided the following highlights for the City’s financial report for August:

- *The Fund balances for all funds increased from \$26,697,378 on January 1, 2018 to \$29,413,909 as of August 31, 2018.*
- *The Fund balances for the General Fund increased from \$13,491,664 on January 1, 2018 to \$16,036,017 as of August 31, 2018.*

MOTION Mr. Myers moved, Ms. Dorothy seconded a motion to accept the Financial Report.

The motion carried unanimously by a voice vote.

Mr. Bartter said that the 2016 and 2017 audit is complete and if there are no objections from Council, he will notify the auditors that we are going to waive the post audit conference.

MOTION Ms. Kowalczyk moved, Mr. Foust seconded a motion to forego a post audit conference

The motion carried unanimously by a voice vote.

REPORT OF COUNCIL MEMBERS

Ms. Thress shared that she attended a very good open meetings and records training earlier in the day and that Council is covered for that training. President Michael expressed her thanks.

Mr. Foust asked about getting an update into the status of Lime Bike in Worthington because he noticed they have vanished in places that they used to be. Mr. Hurley replied that we are half way through the six-month pilot and he receives a monthly report that is shared with the Bicycle and Pedestrian Board. He can forward that information to Mr. Foust.

Mr. Smith followed up on the idea of a citizen’s budget advisory board and how there should be some sort of community engagement starting that process now for the 2020 budget. City government is slow, and it would allow there to be greater familiarity with the 2019 budget. He additionally asked for there to be research into Brecksville who would be a comparable city to Worthington adding it to comparison cities in the general fund policy revision. National Church Residences sent an email out with a community report on Stafford Village and he hopes everyone is reading that and taking it in.

President Michael reported that the Central Ohio Mayors and Managers Association meeting took place last Friday with one topic discussing how it was 80 years ago that the

legislature took away the ability for municipalities to levy sales tax to finance things and for 70 years there had always been the Local Government Fund (LGF). It is only in the past 10 years that we didn't have an LGF. There is an election year coming forward and, on both sides, there is a question to be asked regarding LGF funding and Home Rule issues. There was a really good presentation from COTA. There is a meeting coming up in October with the Age Friendly Communities. They are trying to expand Age Friendly throughout Franklin County. Worthington has been invited and we plan to be at the meeting.

EXECUTIVE SESSION

MOTION Mr. Foust moved, Mr. Smith seconded a motion to meet in Executive Session to discuss Appointments to Boards and Commissions.

The clerk called the roll on Executive Session. The motion carried by the following vote

Yes 6 Kowalczyk, Dorothy, Myers, Foust, Smith, and Michael
No 0

Council recessed at 8:48 P.M. from the Regular meeting session

President Michael declared the City Council back in open session at 8:54 P.M.

ADJOURNMENT

MOTION Mr. Myers moved, Mr. Smith seconded a motion to adjourn.

The motion carried unanimously by a voice vote.

President Michael declared the meeting adjourned at 8:54 P.M.

/s/ Ethan C. Barnhardt
Assistant City Clerk

*APPROVED by the City Council, this
17th day of September, 2018.*

/s/ Bonnie D. Michael
Council President