

**XENIA CITY COUNCIL
REGULAR SESSION
MEETING MINUTES
AUGUST 22, 2019
6:00 P.M.**

1. CALL TO ORDER: President Engle called the August 22, 2019, Regular Session to order at 6:00 p.m. in the City Council Chambers, City Administration Building.

2. INVOCATION: Pastor Andy Spencer, First Church of Christ, provided the Invocation.

3. PLEDGE OF ALLEGIANCE: Councilman Levi Dean led those present in the Pledge of Allegiance.

4. ROLL CALL: Vice President Edgar Wallace, Councilman Will Urschel, Councilman Dale Louderback, Councilman Wesley Smith, Councilman Levi Dean, Mayor Sarah Mays, and President Michael Engle were present.

5. APPROVAL OF MINUTES: Motion by Councilman Louderback, seconded by Vice President Wallace, to approve the August 8, 2019, Regular Session meeting minutes as written. No discussion followed. The Roll on this was the following:

Ayes: Wallace, Urschel, Louderback, Smith, Dean, Mays, Engle

Nays: None motion carried.

6. SPECIAL PRESENTATION(S): None.

7. AUDIENCE COMMENTS: President Engle explained the procedures for audience comments and invited anyone who wished to speak to come forward.

Michael Burrell, 2304 Carolina Drive, said he reviewed the last set of Council's meeting minutes, which stated the gas tax revenue would be put in general fund. That money is allocated for road improvements and should not be used for other expenditures. Regarding the City Charter, he suggested that any expenditure of \$8-10 million or more should be put to a vote. Contrary to what has been stated, voters are intelligent enough to make that decision. Also, there should be term limits for elected Council members so people cannot serve for 20 years. He suggested a two- to four-term maximum. He asked if background checks are done on those running for Council. He did not think those who owe back taxes or those who have a criminal background should be allowed to run.

8. OLD BUSINESS:

A. President Engle presented **RESOLUTION 2019-Y AUTHORIZING THE CITY MANAGER TO EXECUTE A USE AGREEMENT WITH GREGORY P. BERNITT FOR THE USE OF CITY PROPERTY LOCATED ADJACENT TO 30 S. DETROIT STREET**, originally introduced by Mayor Mays, and it was read for a second time.

Motion by Mayor Mays, seconded by Councilman Dean, to adopt Resolution 2019-Y as read. No discussion followed. The Roll on this was the following:

Ayes: Wallace, Urschel, Louderback, Smith, Dean, Mays, Engle
Nays: None motion carried.

9. PUBLIC HEARING(S): None.

10. NEW BUSINESS:

A. RESOLUTION 2019-Z APPROVING A PETITION FOR SPECIAL ASSESSMENTS FOR SPECIAL ENERGY IMPROVEMENT PROJECTS, A PLAN FOR PUBLIC IMPROVEMENTS, AND THE ARTICLES OF INCORPORATION FOR THE CREATION AND GOVERNANCE OF AN ENERGY SPECIAL IMPROVEMENT DISTRICT UNDER OHIO REVISED CODE CHAPTER 1710; AND DECLARING THE NECESSITY OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS DESCRIBED IN THE PLAN FOR PUBLIC IMPROVEMENTS IN COOPERATION WITH THE XENIA ENERGY SPECIAL IMPROVEMENT DISTRICT, AND DECLARING AN EMERGENCY. City Manager Brent Merriman said this item is related to the next two items on the agenda. Resolution 2019-Z is the first of three steps, which if collectively approved, would facilitate the implementation of new programming to provide additional funding options for energy efficiency related to components of eligible projects. This funding mechanism, known as Property Assessed Clean Energy (PACE) funding, provides a creative means of generating revenue through existing special assessment provisions of the Ohio Revised Code to use for projects generally considered to improve energy efficiency for a private facility. The monies generated are not governmental charges nor are they taxes; rather, they are special assessments imposed at the request of a property owner on their real property that will benefit via an improvement being made to that property. Assessments are collected like property taxes but must be used to pay toward the cost of that improvement. PACE funding is a beneficial source of resources in many respects, but one specific benefit is the debit liability is attached to the property and not necessarily to the property owner. Under current state legislation, PACE funds can be leveraged for commercial and industrial projects, although there are some current pilot projects in various locations around the state looking at application of this program for residential. For now, it is limited to commercial/industrial redevelopment projects. PACE funding can be added to other traditional funding mechanisms and is typically not the primary source of funding for most qualified commercial projects.

Mr. Merriman said city staff has been in conversation with various local property owners who have expressed an interest in PACE funding and have lobbied for a recommendation to City Council implementation of the necessary legislation to create a local program. Resolution 2019-Z is the first of three recommendations with the collective goal of developing a PACE program. The first step authorizes the creation of an Energy Special Improvement District (ESID), which is authorized under state law and is a statutory instrument designed to allow for the collection of property taxes under certain conditions and for certain purposes. In this case, the ESID would facilitate the collection of assessments at the property owner's request to be applied toward the payment of a PACE financing model for eligible energy efficiency projects that could include roof or window replacements, new HVAC systems, etc., that improve the overall energy efficiency to reduce energy consumption. In order to move forward with the PACE program, State law requires the creation of an ESID as the first step. Staff, therefore, recommends emergency passage of Resolution 2019-Z to authorize creation of the ESID as required under Ohio Revised Code Chapter

1710. The reason for the emergency is to make this program available as soon as possible for the initial project at 136 W. Second Street. He noted there must be a project to initiate the ESID process.

President Engle entertained a motion to pass Resolution 2019-Z as presented.

Motion by Vice President Wallace, seconded by Mayor Mays, to adopt Resolution-Z as presented. Discussion followed. Councilman Urschel said he was in favor of moving forward with this initiative because there would not be any cost to the City except for some administrative tasks. This funding model basically allows businesses to levy an assessment on themselves over a period of time. The assessment is collected by the County Auditor, which is funded back to the City, and the City in turns funds it back to the organization providing the initial funding. Mr. Duke said that was correct; the City would receive the settlement from the County and pay the lender. Councilman Urschel said no city funds are obligated under this process, but it allows business entities within the City to take advantage of this funding strategy that the State has approved. They have to start with one organization, and if other organizations decide that they want to participate, they will be in the same district. Mr. Merriman said the district would be expanded and did not have to be contiguous to other districts. The Roll on this was the following:

Ayes: Wallace, Urschel, Louderback, Smith, Dean, Mays, Engle
Nays: None motion carried.

B. ORDINANCE 2019-17 DETERMINING TO PROCEED WITH THE ACQUISITION, CONSTRUCTION, AND IMPROVEMENT OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF XENIA, OHIO, IN COOPERATION WITH THE XENIA ENERGY SPECIAL IMPROVEMENT DISTRICT, AND DECLARING AN EMERGENCY. Mr. Merriman said Ordinance 2019-17 is the second of three legislative steps necessary to move forward with the creation of an ESID and development of a PACE funding program, which establishes Council's intent to proceed with acquiring, constructing, and improving certain public improvements described in the plan for public improvements in cooperation with the Xenia ESID. This will allow the Property Assessed Clean Energy (PACE) Program to be utilized for the project, and will establish the framework by which other PACE projects could be completed in the future. Although he would not normally ask Council to approve a project and levy assessments through emergency legislation, in this case the property owner himself has petitioned asking for the assessments on his property. The property owner also waived, in the petition, any notice requirements, which allows the needed legislation to be done by emergency. As the project is being financed, the legislation needs to be passed as quickly as possible to meet the financing deadlines.

President Engle entertained a motion to pass Ordinance 2019-17 as presented.

Motion by Vice President Wallace, seconded by Councilman Smith, to adopt Ordinance 2019-17 as presented. No discussion followed. The Roll on this was the following:

Ayes: Wallace, Urschel, Louderback, Smith, Dean, Mays, Engle
Nays: None motion carried.

C. ORDINANCE 2019-18 LEVYING SPECIAL ASSESSMENTS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF XENIA, OHIO, IN COOPERATION WITH THE XENIA ENERGY SPECIAL IMPROVEMENT DISTRICT; AUTHORIZING AND APPROVING AN ENERGY PROJECT COOPERATIVE AGREEMENT BY AND AMONG THE CITY OF XENIA, OHIO, THE XENIA ENERGY SPECIAL IMPROVEMENT DISTRICT, BFC ENTERPRISES, LLC, AND GREENWORKS LENDING LLC PROVIDING FOR THE FINANCING OF THOSE PUBLIC IMPROVEMENTS; AUTHORIZING AND APPROVING A SPECIAL ASSESSMENT AGREEMENT BY AND BETWEEN THE CITY OF XENIA, OHIO, THE COUNTY TREASURER OF GREENE COUNTY, OHIO, BFC ENTERPRISES, LLC, THE XENIA ENERGY SPECIAL IMPROVEMENT DISTRICT, AND GREENWORKS LENDING LLC REGARDING THOSE SPECIAL ASSESSMENTS, DECLARING AN EMERGENCY. Mr. Merriman did not have any further information to share on this item, which is the third step in the process to establish the ESID.

President Engle entertained a motion to pass Ordinance 2019-18 as presented.

Motion by Vice President Wallace, seconded by Mayor Mays, to adopt Ordinance 2019-18 as presented. No discussion followed. The Roll on this was the following:

Ayes: Wallace, Urschel, Louderback, Smith, Dean, Mays, Engle

Nays: None motion carried.

D. Introduction of Resolution 2019-AA Authorizing the Sale of City-Owned Properties located at 2046 El Camino Drive (Beverly Hills Park) to Rhonda P. Hiles and Thomas and Marla Whitacre. Mr. Merriman said this resolution is recommended for introduction at the direction of Council based on prior conversations on this matter. The issue at hand is the requested sale of a small unused portion of City property, which is part of Beverly Hills Park. Staff evaluated the possibility of the sale and determined that the portion of property they are interested in has very minimal value to the City and has been virtually unused as park space since the park's development. The remainder of the park, including the playground, basketball court, and picnic shelter, would remain accessible and available for use to the public. The sale of this unutilized parkland would also relieve the City of the need to maintain, mow and provide liability insurance on the property. As the property proposed for sale is of little value to anyone else as it is landlocked by surrounding properties and is not being utilized as park land, staff recommends Council authorize the sale of the property to the Hiles family and the Whitacre family with the initial step of introduction of Resolution 2019-AA.

President Engle entertained introduction of Resolution 2019-AA as presented.

Councilman Louderback presented RESOLUTION 2019-AA AUTHORIZING THE SALE OF CITY-OWNED PROPERTIES LOCATED AT 2046 EL CAMINO DRIVE (BEVERLY HILLS PARK) TO RHONDA P. HILES AND THOMAS AND MARLA WHITACRE, and it was read for the first time.

E. Administrative Motion Approving the Schedule of Bills in the amount of \$393,030.71. Mr. Duke requested the payment of bills in the amount of \$393,030.71.

President Engle entertained a motion.

Motion by Councilman Smith, seconded by Vice President Wallace, to approve the schedule of bills in the amount of \$393,030.71. No discussion followed. The Roll on this was the following:

Ayes: Wallace, Urschel, Louderback, Dean, Smith, Mays, Engle

Nays: None motion carried.

11. APPOINTED OFFICIALS REPORTS AND COUNCIL COMMENTS:

A. City Manager, Finance Director, and Law Director:

Mr. Merriman had the following three items to share:

- He and Mr. Duke presented a “mini” Citizen’s Academy to the Charter Review Commission on Tuesday, August 20th, which included an overview of the City’s operational leadership structure and financial procedures and transparency requirements. He noted the Commission consists of a great group of people. He appreciates their volunteerism and dedication to this important process.
- He said Xenia Community Schools is back in session. He wished everyone a safe school year and asked everyone to be aware of and observe school zones and to stop for flashing yellow school bus lights so students can get on and off the busses safely. Xenia Police Division patrol officers will be present at those school zones.
- He said the next Neighborhood Night Out would be held on Tuesday, August 27th, at Arrowood Elementary School from 5 – 7 p.m. He thanked Xenia Community Schools for hosting the event and the event sponsors including Kroger, Greene Memorial Hospital/Kettering Health Network, and Xenia Bouncy Castle. He said there would be many giveaways, including food. The NNO events provide an opportunity for community members to interact with local leaders and service providers to answer their questions and inform them of all the services available in Xenia.

Councilman Urschel asked if the Charter Review Commission meetings are open to the public and if there was an opportunity for audience comments for those who wish to make comments or recommendations on Charter changes. Mr. Merriman said the meetings are open to the public and the agendas are published; however, those wishing to submit recommendations on Charter changes should contact the Law Director, who serves as the legal advisor to the Commission. Mayor Mays noted they are reviewing one section at a time, and not necessarily in numerical order. Rather, some sections reference other sections of the Charter, so they must review corresponding sections at the same time. If audience members wish to comment on a particular section, they should contact the Law Director so their recommendations can be considered and presented to the Commission when appropriate and applicable. Councilman Urschel asked if there was an opportunity for audience comments at the meetings if a resident has a comment on the section they are reviewing at that time or if there was any intent to allow audience comments during the review process. Mr. Merriman said the Commission wishes to obtain public discussion on their recommendations because those recommendations will eventually be presented to City Council for review and consideration and ultimately the voters. Charter review is a very in-depth process, and they wish to keep the meetings and conversations somewhat structured versus having ad-hoc conversations. Mayor Mays agreed. Councilman Urschel said if citizens have recommendations for Charter changes, he asked if they should contact the Law Director or members of the Commission. Mr. Merriman said they could do either, but he preferred they contact the Law Director. Mayor Mays said citizens can attend the meetings and ask when a subject will be presented for review

and discussion. Mr. Merriman noted that every subject and every proposed amendment has to be vetted through a particular process which includes looking at statutory requirements. Some things, such as something that was suggested this evening during audience comments in regard to whether or not somebody is eligible to be on the ballot, cannot be changed due to statutory requirements. The City cannot put further restrictions above and beyond statutory law.

Vice President Wallace said only two Councilmembers are serving on the Commission and asked if the remaining Council members could be included on agenda publication and/or meeting minutes. Mr. Merriman said yes. He noted the Commission has until next July to submit a report to Council, and he did not anticipate presenting any changes to the voters until November 2020 or later. The process of amending the Charter will include a lot of outreach to the community over the course of the next 12 to 18 months.

Councilman Louderback said he did not believe they would be violating Sunshine Laws if more than three Council members were present. Mr. Merriman agreed.

Councilman Smith said a few months ago Council made a motion to move their regular session meeting time from 7 p.m. to 6 p.m. for the summer months. He would like to continue meeting at 6 p.m. The earlier meeting time has not reduced the number of audience members and seems to work out well for everyone, including City staff. Mr. Merriman said if the remaining Council members concur, he would ask Ms. Fisher to bring forward a Resolution or an agenda report to take that action at their next meeting. Nobody expressed opposition to changing the time to 6 p.m. President Engle asked Mr. Merriman to proceed. He agreed that the 6 p.m. starting time was more respectful of City staff's time.

Mr. Duke said he reviewed the last set of Council minutes, and contrary to what was stated during audience comments, there was no intent to put gas tax revenue in the General Fund. Those gas tax dollars go into a specific fund, as they always have, and there are specific requirements as to how those funds can be used, which is for streets. Councilman Urschel believed there was some confusion because the paragraph about the gas tax was immediately following the discussion on the sale of the cell tower easement, and the sale of cell tower easement revenue will go into the General Capital Fund.

Ms. Fisher was not in attendance.

B. Mayor and City Council:

Mayor Mays, Councilman Louderback, Councilman Smith, and Councilman Dean had nothing further to share.

Councilman Urschel said he participated in a great session with Five Rivers and many other public, private, and faith based organizations as they talk about homelessness and drug addiction recovery in Xenia. He was impressed by all who are working on this effort, but they need an ombudsman to help coordinate their efforts. He will look to make some suggestions on how the City can participate. Vice President Wallace expressed his regret for not knowing about the meeting. Councilman Urschel said he would make sure to get him involved for future meetings.

Vice President Wallace said New Life Christian Assembly leased Lexington Park—at least that's what they thought—to give away school supplies and food. They got started at 11 a.m. and at 1:30-2 p.m., they had over 150 people there including lots of children. A group of young people from CSU and Wilberforce came and set up right beside them, and one young man was very disrespectful. He called the City Manager and Officer Walsh came out to the park. At that time, he was told that New Life cannot and did not lease the entire park. He asked why the City accepts a payment and requires insurance for the event. He noted the church group was playing respectful gospel music while the other group was playing very inappropriate music very loudly, which was very offensive. He noted the situation was very upsetting to the people from the church; he noted New Life has been using the park for many years. Mr. Merriman said dispatch sent several officers to the park. In response to Vice President Wallace's questions, he said with the existing City ordinance, an individual or group cannot lease an entire park. The City use to allow rental of the shelters at all City parks, but now they only rent use of the pavilion at Shawnee Park. All other shelters are now on a first come, first served basis. The fees the church paid are associated with a special event permit, which is required for events that are open to the public where the anticipated crowd is over a specific number of people. The special event fee is only \$50, and the City provides services to assist them in the process of looking at the needs for the event including the consideration for road closures, electrical, trash service, restrooms, security, etc. The special permit review process includes vetting the application through the Police Division, Fire Division, Planning and Zoning Department, and Public Service. If everything checks out, the permit is approved by the City Manager's Office and the event is allowed at that location with the approved conditions. Space at the park, however, does remain open public space, and they cannot limit other individuals from utilizing that space. In terms of how they use the space and their conduct, the Xenia Police Division have the discretion to determine if there is a disorderly conduct incident, noise ordinance violation, etc. Unless a crime has been committed, they cannot be asked to leave. Vice President Wallace asked why the other group did not have to obtain a special events permit. Mr. Merriman said it may be the case that the other group was an ad-hoc, unplanned gathering. If it was a planned gathering with a specific number of expected guests, they should have applied for a special event permit. However, if a group does not go through the special event permit process, for example for a family reunion, there is very little the City can do in terms of enforcement. They can use the public space, and again, if a crime has not been committed, they cannot be asked to leave. He suggested further evaluation with the Law Director in terms of the law with regard to public conduct.

President Engle thanked Mr. Merriman and Mr. Duke for addressing some of the audience comments made this evening. He noted City Council is not changing the Charter of this City—the citizens will vote on any changes and amendments to the City Charter. He noted the Charter Review Commission consists of two Councilmembers and three citizens [along with two alternate citizen members] who will make recommendations to Council to put those changes and amendments on the ballot. Further, nobody on this Council has served on Council for 20 years. The longest serving member was Pat Felton who was at the 15-year mark when she resigned due to medical reasons. He was certain none of them serve on Council for thrills or money—they do it because they love this community. He was offended by those comments. They all give extensively of their personal time and resources to this community. Councilman Urschel said there are a lot of ways to serve in a community that are helpful and constructive. A number of Boards and Commissions work for City Council, and people can participate in that process without going through an election process. Any qualified citizen can get some signatures and put his or her name

