

## THE COMMON COUNCIL

May 04, 2020

6:30 P.M.

**THE REGULAR MEETING OF THE COMMON COUNCIL FOR THE CITY OF CHARLESTOWN WAS HELD ON MONDAY, MAY 04, 2020 AT 6:30 P.M. AT CITY HALL WITH MAYOR TREVA HODGES PRESIDING.**

Council members present were: Ruthie Jackson, Brian Hester, BJ Steele, John Cox and Bo Bertram. Also present were Clerk Treasurer Donna Coomer, Common Council Attorney Michael Gillenwater and City Attorney Mickey Weber.

### **Pledge**

None - Council Meeting is being held virtually and teleconferencing.

### **Agenda**

Mayor Hodges asked for approval on the agenda.

Councilwoman Jackson made a motion to approve the agenda, seconded by Councilman Hester. Approved 5-0.

### **Minutes, Claims and PR Voucher**

A motion was made by Councilman Cox to approve the Minutes, Claims and the PR Voucher from 04/06/2020 to 04/26/2020, seconded by Councilman Hester. Approved 5-0.

### **Public Comment**

Clark Nickles  
1501 Tunnel Mill Road

Mr. Nickles said he owns 3 acres in the county on Dean Street and this property is zoned for construction. He received a variance to park his cranes and other heavy equipment six days a week. His property is in the middle of the property they want to annex into the city to build apartments. His property will not fit in with new apartments.

Alex Latuch  
Route 1 Highway 62

He is in the county and does not want to be annexed into the city. He does not want anyone parking next to his property. He would consider selling his property but will wait until the economy is better.

Mayor Hodges said since the coronavirus we have let people email their comments. She is going to read those comments into the meeting.

Elijah Harris  
6514 Sunset Loop

Why should we pay the cost of Bob Hall's failures and said he will remember how the Council voted for this?

Ellen Keith  
101 Clark Road

Bob Hall should take responsibility and the Council should vote to fire Council Attorney Gillenwater. She wants them to vote no on Resolution 2020-R-5.

Sally Doss  
133 Winthrop Way

Why does the taxpayer have to cover the cost of Bob Hall's illegal doings? The majority of citizens voted him out for the wrong things he did. They would not want to pay his legal fees. He should take responsibility for his actions. The Council should use their conscience and vote no on Resolution 2020-R-5.

Melissa Crawford  
344 Clark Road

This lawsuit 10C02-2001-CT-016 was filed on 01/2020 Mickey Weber our city attorney is capable of representing the city. After researching code 34-13-34 and 34-13-41 it says attorney fees can be paid for former employee. Why are you paying for a council attorney when the city attorney is capable of representing the city? That is a waste of tax dollars for the City of Charlestown. Vote no on Resolution 2020-R-5.

David Keith  
3101 Clark Road

He is asking the Council to vote no on Resolution 2020-R-5. There were five council members elected to the Common Council to represent them and they would have common knowledge and sense. Why does the Council need a city attorney when city attorney can answer their questions?

Barbara Meredith  
180 1<sup>st</sup> Street

She read Resolution 2020-R- 5 and there were state statues giving the Council legal rights to pay legal fees for a previous employee.

Her argument would be if the City can afford the cost and without causing hardship to the taxpayer, she asked if the Council has checked to see if the cost is acceptable to the budget. She said it is a foregone conclusion that they will vote yes to the Resolution. Her concern is can we settle this, avoid legal fees, a big settlement and bad publicity. The Council has the right to do this, everyone needs to get over it, settle with the least amount of cost and division to the town. If you're not satisfied with the vote, vote your council member out next election.

### **Mayor's Comments**

Mayor Hodges said she has an update for the Council about the statutes of where we are on reopening. She will send out in text form at the end of the meeting. On Friday, May 01, 2020 Governor Holcomb extended the stay at home order until June 04, 2020. The status and the outline to reopen businesses is July and the businesses are encouraged to follow Governor Holcomb's plan. The governor's plan allows for municipalities to reopen to fit local need. Mayor Hodges has a three-phase plan to reopen the City Parks, Family Activity Center, Police Station, City Hall, A&E Building, and other rental city facilities. Governor Holcomb extended the executive order until June 04, 2020. Her plans do not include specific dates because after talking to Dr. Yazel at the Clark County Health Department, he advises since the local area went up last week it would be a bad decision to move forward. Therefore, we will remain in phase-zero until the criteria of 14 days has been met. She set the criteria in the release plan or measures and data on when it is safe to move forward. Our staff is working remotely and staggering shifts.

The pandemic is causing economic hardships for our families and businesses. It will also affect city revenue. She will be giving an update on projections and the steps being taken to execute them. She received an unofficial revenue of cash flow from Baker Tilly. They predicted we will have 30% collections in June for property taxes. They also calculated about an overall delinquent of 10%. The estimated budget shortfall will be approximately 1.5 million this year in June disbursements due to tax reduction because of the pandemic. It is imperative that we need to make financial decisions because of the shortfall. Many of our city departments have critical need for equipment and resources. She has asked all city department supervisors to monitor their spending because of this critical time.

Mayor Hodges said when she came into office, she was careful and focused on needs not wants. Deputy Clerk Heather Schrimp reviewed the uniform cost and saved the city about \$11,000.00 per year. There are four less non-essential take home vehicles on the road. By comparing salaries in the 1<sup>st</sup> quarter, we cut them by \$46,390.00 per year by being conservative. Some quality of life things needed to be temporary paused, such as park renovation, sidewalk construction. We had to cancel Founder's Day, it would have been our 20<sup>th</sup> year celebration. She is still evaluating the Family Activity Center to see what happens. We delayed the adoption of the Cumulative Capital Development Fund and even though it has a low impact for homeowner because of Covid 19 it will not be adopted at this time.

The Cumulative Capital Development Fund (CCDF) is not a new concept for our city. The Council passed Resolution 2016-R-8 in July of 2016. The DLGF rejected the adoption because legal counsel at that time failed to publish it in advance twice as required by state statute. This year in anticipation she will sponsor that CCDF legislation. She took care that those publications would be put in and that is why she went through Baker Tilly, our financial advisors, as they are the experts.

The publications created some confusions due to the difference in standard practices for our clerk treasurer. Baker Tilly includes governing names of representatives that vote on the matter at hand. This allows the taxpayers to contact their council representative to voice their opinion, which is the function of the public notice. This does not indicate they will vote for it, support it or are in favor of it. They are the ones that cast the vote.

Normally the Clerk Treasurer would post the publication and list the city attorney. Baker Tilly issues the governing body. This caused confusion and it prompt the council to pass Resolution 2020-R-8. Mayor Hodges said she is issuing an executive veto for a procedure defect that makes it an invalid resolution.

The Council Rules of the Quorum established this year Resolution 2020-R-1 dictates all legislation in the form of Resolutions or Ordinance must be submitted to the clerk treasurer's office no later than Thursday after a Monday meeting. The clerk did not receive a copy of Resolution 2020-R-8 until three weeks after the meeting. This caused the Resolution to be passed with the wrong number. It should not have been number 8 instead number 4. Therefore, it is an invalid Resolution. She understands the text that was added to the regular monthly meeting and with the corrected number she does not believe this Resolution is necessary.

Mayor Hodges said the Resolution 2020-R-1 limits sponsors of Resolutions & Ordinances to the Mayor, Council Members and Clerk Treasurer to keep us on track, especially in meetings with video. The elected official who is sponsoring legislation should read it or if too long provide a summary of the proposal and then we should get a motion from a council member to put it up for consideration followed with a second of the motion. We can follow up with discussion. The Mayor or Council President will call for a vote and announce the results. Since voting is online it should be done by roll call to make sure the vote is accurate.

### **Ordinance 2020-OR-08**

This ordinance is an appropriation from the General Fund to the Police Miscellaneous Fund of \$7,855.82 and the LOIT Fund to Vehicle Payment of \$4,017.60. The total for the appropriation is \$11,873.42.

Councilwoman Jackson made a motion to approve Ordinance 2020-OR-08 on the first reading, seconded by Councilman Steele. Approve 5-0

Councilwoman Jackson made a motion to suspend the rules on Ordinance 2020-OR-08, seconded by Councilman Steele. Approve 5-0

Councilwoman Jackson made a motion to approve Ordinance 2020-OR-08 on the second and final reading, seconded by Councilman Steele. Approve 5-0

### **Ordinance 2020-OR-09**

Ordinance will establish for mobile food vendors to come to Charlestown to sell their products. In the 1970's there was an ordinance that disallowed mobile vendors in the city. Councilman Hester said we want to make this as safe as possible.

Mr. Tony Jackson of Planning & Zoning said code enforcement will handle permits and background checks on the owners, their employees and keep them on file. Councilwoman Jackson asked if they are going to be on public property, do they have to let us know? Councilman Hester said they do have to notify the city. The police department will also have a background check on file. They must have these on file if they are on public property. Councilman Hester said he wants to change the permit fee from \$200.00 to \$100.00 and a background check will be \$25.00 per employee.

Councilman Hester made a motion to approve Ordinance 2020-OR-09 on the first reading, seconded by Councilwoman Jackson. Approved 5-0.

Councilman Hester made a motion to approve to suspend the rules on Ordinance 2020-OR-09, seconded by Councilwoman Jackson. Approved 5-0.

Mayor Hodges asked Councilman Hester to approve the change of the permit fee from \$200.00 to \$100.00.

Councilman Hester made a motion to approve changing the fee from \$200.00 to \$100.00 and approve the second and final reading of Ordinance 2020-OR-09, seconded by Councilwoman Jackson, seconded by Council

### **Ordinance 2020-OR-10**

Mayor Hodges said the tow-in fees were established by Ordinance 2000-OR-11 at \$25.00 per tow. This resolution is to change the rate to \$50.00 and it will be deposited into a non-reverting fund and can be used for anything the chief determines. The Police Department has not raised the tow rate in 20 years. Councilman Hester asked if it could be done in increments because of these economic times. Mayor Hodges said this Ordinance 2020-OR-10 is for when a person abandons or has a violation of law and their vehicle is towed. Chief Wolff said \$45.00 would be in line with other agencies in the area.

Councilman Hester made a motion to approve Ordinance 2020-OR-10 and changing the amount for tows-in from \$50.00 to \$45.00, seconded by Councilman Steele. Approved 5-0.

Councilman Hester made a motion to suspend the rules on Ordinance 2020-OR-10, seconded by Councilwoman Jackson. Approved 5-0.

Councilwoman Jackson made a motion to approve Ordinance 2020-OR-10 on the second and final reading, seconded by Councilman Steele. Approved 5-0.

### **Resolution 2020-R-8**

This Resolution is regarding public notices to be presented to the council before any action is taken. Mayor Hodges said this Resolution was approved as number 8 making it an invalid resolution, not standard practice and not necessary.

Councilman Cox made a motion to override Mayor Hodges veto on Resolution 2020-R-8, seconded by Councilwoman Jackson. Approved 5-0.

**Resolution 2020-R-4**

Mayor Hodges asked Councilman Hester as the sponsor how do you want to go about this Resolution that was approved under the incorrect number. Councilman Hester asked Clerk Treasurer Donna Coomer what number it should be, she replied #4.

Councilman Hester made a motion to change Resolution 2020-R-8 to Resolution 2020-R-4, seconded by Councilman Cox. Approved 5-0.

**Resolution 2020-OR-5**

Mayor Hodges said this is for former Mayor Hall and Tony Jackson to be represented in a lawsuit over utilities.

Councilman Hester made a motion to approve Resolution 2020-OR-5, seconded by Councilwoman Jackson. Approved 5-0.

Councilman Hester said former Mayor Hall should receive representation from the city since he was an employee of the city, regardless if he was right or wrong in his decisions. If that's the case, no one in their right mind would want to run for office for fear of being sued. Mayor Treva Hodges said she wants the Council to be aware of the financial impact on the city. City Attorney Weber believes that former Mayor Hall, Tony Jackson and members of the former Council are immune by statute 34-13-3-5 Section A, from this lawsuit. Mayor Hodges said the City Attorney is capable and has already filed a motion to dismiss Tony, Bob Hall and the city from the law suit. She has authorized City Attorney to file a motion to dismiss this lawsuit. The Council attorney can file on behalf of the Council. Mayor Hodges presented a comparison of attorney cost between Sellersburg and Charlestown and attorneys Weber and Gillenwater as follows:

City of Charlestown Council	Sellersburg
Attorney Gillenwater	For Comparison
2016 to 2019	2016 to 2019
Amount paid is \$702,759.11	amount is \$220,100.86
Council Legislation and Court case mgmt.	
January to March 2020	January to March 2020
City Attorney Weber fee is \$6,662.70	Council Attorney fee is \$5,856.50
BPW, Council Legislation & Court Case Mgmt.	Council Legislation & Court Case Mgmt.

2020 Budget Amount for attorney fees is \$50,000.00

Mayor Hodges said if the Council wants to approve a conflict of interest they can allow Mr. Hall to pay those legal fees. The Council does not have the authority to pass this Resolution under Indiana code 36-4-6-24. They do not have the authority to hire legal representation for anyone who worked or who now works for the city. Only the head of the legal department can do that, which is City Attorney Mikey Weber. She has already done that.

Councilwoman Jackson said her understanding of this is to waive potential conflict. Council Attorney Gillenwater said this is a frivolous lawsuit filed by a couple individuals due to their

utilities being turned off. Council Attorney Gillenwater said the former Mayor Hall, Tony Jackson, Council Members and a person who did not own the property was listed in the lawsuit.

Council Attorney Gillenwater said unless Mr. Hall waives a conflict of interest, Mr. Weber can't represent him. Mr. Hall is not comfortable with Mr. Weber representing him, because he has no relationship with him. The city has a responsibility to represent Mr. Hall. Council Attorney Gillenwater said he can file the paperwork for the defense to be considered by the judge. There is a case that clarifies a general statute can be overridden by a specific statute. Council Attorney said if he hires someone else it will cost the city more money. There is a statute that says the governing body has the authority to settle a lawsuit for an employee. Mayor Hodges said the reason she thinks both attorneys should not be in discussion, there is a conflict of interest because both attorneys are in a place where they can get more money. The city attorney has already been approved to represent the city. Councilwoman Jackson asked if the lawsuit is not dismissed and the lawsuit is continued, do we have the right to give him legal representation? Mr. Gillenwater said as the governing body he is not allowed to pick his own attorney but the Council can pick one for him. Mayor Hodges said he can go with the city attorney or pay for his own.

#### **Veto on Resolution 2020-OR-05**

Mayor Hodges said she is vetoing Resolution 2020-OR-05 for these reasons.

It is financially not in the best interest of the city. She has shown the numbers and the city attorney has already been contracted at a lower rate to do it. Her and the City Attorney's interpretation is the Council does not have the authority to hire legal counsel for another person, group or agency.

#### **Ordinance 2020-OR-07-**

Mayor Hodges said there was no remonstrance on this Ordinance and is asking for a second and final reading.

Councilman Hester made a motion to approve Ordinance 2020-OR-07 for the second and final reading, seconded by Councilwoman Jackson. Approved 5-0.

Mayor Hodges asked Mr. Benson if he had any discussion.

Mr. Benson  
Applegate & Fifer  
428 Meigs Avenue  
Jeffersonville IN 47130

Mr. Benson said during this annexation they discovered city has been receiving tax revenue. The previous owner was not concerned and if anyone had any other questions to contact him.

#### **Adjournment**

Councilman Cox made a motion to adjourn, seconded by Councilman Steele. Approved 5-0.

Treva E. Hodges  
MAYOR, TREVA HODGES

6-1-2020  
DATE

ATTEST:

Donna S. Coomer  
CLERK TREASURER, DONNA S. COOMER

6-1-2020  
DATE