

**XENIA CITY COUNCIL
REGULAR SESSION
MEETING MINUTES
OCTOBER 10, 2019
6:00 P.M.**

1. CALL TO ORDER: President Engle called the October 10, 2019, Regular Session to order at 6:00 p.m. in the City Council Chambers, City Administration Building.

2. INVOCATION: Senior Pastor Jonathan Pointer, Declare the Works Ministry, provided the Invocation.

3. PLEDGE OF ALLEGIANCE: Councilman Will Urschel 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, and President Michael Engle were present. Mayor Sarah Mays was absent.

Motion by Councilman Urschel, seconded by Councilman Smith, to excuse Mayor Mays from the meeting due to her attendance at an event with the Commander of WPAFB's 88th Air Base Wing. No discussion followed. The Roll on this was the following:

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

Nays: None motion carried.

5. APPROVAL OF MINUTES: Motion by Vice President Wallace, seconded by Councilman Smith, to approve the September 26, 2019, Regular Session meeting minutes as written. No discussion followed. The Roll on this was the following:

Ayes: Wallace, Urschel, Louderback, Smith, Engle

Abstain: Dean

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.

Tammy Price, 25 W. Xenia Street, Xenia, said she was speaking on behalf of the Alan Besco business. She was seeking a change to the Land Development Code to allow for the business to display its 25' inflatable eagle named "Annie." The inflatables the business has used for many years have never caused any safety concerns. The business would like to display the inflatable for 10 days per month. She noted there are worse things to look at in this City than an inflatable eagle. She asked Council to consider changing the code.

Melanie Atley, 4718 Wolford Road, Xenia, said she is the co-owner of the Alan Besco business along with her sister Stacy Sparks. They have been in business for 37 years and have used inflatables for the last 20 years, which have never been a problem in the past. They love Xenia—it is their home.

Her niece named the dinosaur when she was a child, and she is getting ready to turn 19. They own 12 parcels that they use for the business, and they keep them clean. They were told the code allows them to put a sign on every single parcel, and she thought individual signs on every lot would look worse than one inflatable eagle. They are not asking for much ... they just want to display it a few days per month.

Eddie Rousseau, 1161 Salem Lane, Xenia, said he has been in Xenia for 10 years. The ladies who own the business keep the property clean. He understands that the inflatable dinosaur needed to be replaced. The inflatable eagle is used to advertise to 25,000 Xenia residents as well as those coming into the City for any reason including to do business at the dealership. The inflatables are used as a beacon to help guide patrons to their location. The eagle is very patriotic and a national emblem.

Penny Kistler, 8767 Deer Valley Drive, Huber Heights, said she was born and raised in Xenia even though she no longer resides here. She was a senior in high school when the 1974 tornado ravaged the City, and frankly, things have never really been the same since then. The inflatable is one small thing that has become a tradition in Xenia. Many children are thrilled to visit the inflatables, it brings joy to many people, and she prays they can continue this tradition.

8. OLD BUSINESS: None.

9. PUBLIC HEARING(S):

A. RESOLUTION 2019-HH ADOPTING A FIVE-YEAR (2020-2024) CAPITAL IMPROVEMENT PLAN FOR THE CITY OF XENIA, OHIO. City Manager Brent Merriman said pursuant to Xenia City Charter §9.12, the City Council must adopt a Five-Year Capital Improvement Plan (CIP) on or before the first day of November each year. The City Charter also requires a public hearing be held before adoption of the Five-Year CIP. In a work session earlier this year, staff discussed with Council recommended budget priorities, which included discussion on capital projects. Council later approved those priorities, which were incorporated into the 2020 tax budget. Since that time, staff has reviewed the CIP and made adjustments where necessary. The 2020-2024 CIP was delivered to Council on September 26, 2019. As always, it is important to point out that the Five-Year CIP is only a plan. Approval of the CIP does not allocate any funding, authorize any specific project, or obligate Council to implement any portion of the CIP. The funding and approval of specific projects and purchases are addressed in the annual budget process or as needed by appropriation ordinances brought before Council. The 2020-2024 CIP provides a policy road map for financial planning and decision making on key infrastructure, system, and fleet needs. The CIP also informs needs related to rate setting for public utilities. He respectfully requested Council introduce the Resolution following the public hearing.

President Engle opened the public hearing and asked those who wished to speak in favor of the Capital Improvement Plan to come forward to speak. No one came forward to speak. He then asked those who wished to speak against the Capital Improvement Plan to come forward to speak. No one came forward to speak. He then asked for those who wished to speak neither for nor against the Capital Improvement Plan to come forward to speak. No one came forward to speak.

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

Councilman Smith presented RESOLUTION 2019-HH ADOPTING A FIVE-YEAR (2020-2024) CAPITAL IMPROVEMENT PLAN FOR THE CITY OF XENIA, OHIO, and it was read for the first time.

10. NEW BUSINESS:

A. RESOLUTION 2019-II AUTHORIZING A THEN AND NOW PAYMENT OF \$3,336.62 TO COLLETT PROPANE FOR PROPANE GAS, AND DECLARING AN EMERGENCY. Mr. Merriman said the City recently changed vendors for the delivery of propane gas. In the switch between vendors, the purchase order for the previous vendor was closed out and a purchase order for the current vendor, Collett Propane, was opened. The first delivery of propane at the Ford Road WWTP was made on August 27, 2019. The conversion of the purchase orders to the new vendor was not finalized until August 29, 2019. This created an invoice date occurring before the purchase order date and, thus, the need for a Then and Now Statement. Due to the amount of propane needed at the Ford Road WWTP, the \$3,000 limit at which City Council approval of a Then and Now Payment is needed was exceeded by \$336.62. Money is budgeted to make the Then and Now payment.

President Engle entertained a motion to pass Resolution 2019-II as an emergency as presented.

Motion by Councilman Louderback, seconded by Vice President Wallace, to adopt Resolution 2019-II as presented. Discussion followed.

Councilman Louderback said he has been on Council for 12 years, and he has always been pro business, especially Xenia businesses. His first year on Council, he worked to get a “buy local” ordinance so that City office supplies would be purchased from a local business instead of other “big box” stores. This leads to the Alan Besco issue, which has been a Xenia business for 37 years with 10 employees. They keep a pristine business with a good reputation. After the denial of the variance, he explained that the business can file an appeal with the Greene County Court of Common Pleas, which will cost some money, or they can request a Land Development Code text amendment. If the latter, the Planning and Zoning Commission hears the request, and whether they endorse the change or not, Council makes the final decision. He would be more than happy to vote yes for Annie the eagle. He noted they would need three additional aye votes to change the code. He asked the Law Director for confirmation on what he shared. Ms. Fisher said that was correct. Any text change to the Land Development Code requires the Planning and Zoning to hold a public hearing and make a recommendation to City Council, and City Council would also hold a public hearing before entertaining passage of the ordinance. Councilman Louderback asked if he could make a motion this evening. Ms. Fisher said per the Charter, ordinances must be presented in writing for Council consideration. Councilman Louderback told everyone in the audience that they have his full support.

Mr. Merriman said regarding the action at hand, he said it was a pleasure to work with Collett Propane, which is also a local business.

The Roll on this was the following:

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

Nays: None motion carried.

B. RESOLUTION 2019-JJ AUTHORIZING THE CITY MANAGER TO EXECUTE THE LPA AGREEMENT AND ALL NECESSARY DOCUMENTS WITH ODOT FOR THE RESURFACING OF N. DETROIT STREET, FROM CHURCH STREET TO KINSEY ROAD, AND DECLARING AN EMERGENCY. Mr. Merriman said in October 2018, the City of Xenia applied for and was awarded Surface Transportation Program (STP) Grant funds through MVRPC to rehabilitate N. Detroit Street from Church Street to Kinsey Road in Year 2024. Engineering staff estimates the total construction cost to be \$1,260,737.68. The STP grant specifies a 69% federal/31% local split for the funding of this project, which results in the City of Xenia being responsible for a local share match of \$390,828.68, which would be paid from 229 funds as an authorized use of those funds. The City will oversee the construction of these improvements. Officials at ODOT have requested that Council authorize the City Manager to execute a standard LPA Agreement and return it as soon as possible in order to maintain the intended project schedule. Consequently, he respectfully recommended the Resolution be passed as an emergency.

President Engle entertained a motion to pass Resolution 2019-JJ as an emergency as presented.

Motion by Vice President Wallace, seconded by Councilman Dean, to adopt Resolution 2019-JJ as presented. Discussion followed. Councilman Urschel commended City Engineer Chris Berger and his staff, Finance Department staff, et al, who assisted in getting these grant dollars, which are critical in augmenting City funds for street improvements. Even though the project is a number of years out, it is critical, and it was great to get almost 70% of the project paid for by the state government. Councilman Louderback asked if this project would repave the street in front of Xenia High School. Mr. Merriman said the project will resurface N. Detroit Street from Church Street to Kinsey Road but does not include Kinsey Road. He noted there is another project that Council authorized an application for Issue II dollars, and the project includes upsizing the water main and resurfacing Kinsey Road. Councilman Louderback said he recently talked to the School Superintendent about the project, which was very important especially if the high school stays where it is currently located. Mr. Merriman agreed. Councilman Urschel asked the timeframe of Issue II grant. Mr. Merriman said it is about two to three years out and would probably be built before the subject project begins. He said Kinsey Road is in really bad shape, and they will have to find a way to do some improvements until the water line is repaired and the street is repaved properly. The Roll on this was the following:

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

Nays: None motion carried.

C. Administrative Motion Authorizing the City Manager to Approve Two Assignments and Assumptions of Lease, from Innovative Healthcare Solutions, LLC, to Andrew Lewis, of the City-Owned Properties at 100-104 N. Detroit Street. Mr. Merriman said in the redevelopment efforts that followed the 1974 tornado, the City of Xenia became the owner of 100-104 N. Detroit Street, Parcel ID M40000100070013800. Per the staff report, the property contains a single-story, approximately 6,222 square foot building that was built in approximately 1978. The City entered into a lease agreement with Xenia Leasing Company in 1982 for this building. At the time, Xenia Leasing Company sublet the building to Mitchell I. Singer. Since 1982, there have been multiple assignments of the sublease, with Innovation Healthcare Solutions, LLC (IHS) being Xenia Leasing Company's most recent tenant. Then, IHS assumed Xenia Leasing Company's

Lease in 2018, resulting in a direct landlord-tenant relationship between the City of Xenia and IHS. As a result of changes in their business model, IHS no longer has a need for 100-104 N. Detroit Street. Andrew Lewis wishes to assume IHS's lease for the purpose of converting the building into a multi-sport athletic training facility known as the Gladiator Training Center. It is staff's understanding that the facility will be used by select youth sports leagues for practice and/or competitions and will provide specialized training in sports such as wrestling, martial arts, and others. Mr. Lewis is currently in the process of assuming IHS's lease. Among other considerations, the assignments/assumptions of lease from IHS to Mr. Lewis require signatures from the City Manager, which in turn requires approval from Council by administrative motion. Upon the lease assignments/assumptions, only the tenant will change. The lease itself will remain unchanged, and Mr. Lewis will become subject to the same terms as IHS. The proposed use is permitted by current zoning and will bring much-needed activity to the currently vacant building at 100-104 N. Detroit Street. Staff recommends that Council allow the lease assignments/assumptions to proceed.

President Engle entertained a motion.

Motion by Councilman Louderback, seconded by Councilman Urschel, to authorize the City Manager to execute two lease assignments/assumptions from Innovative Healthcare Solutions, LLC (as the City's tenant and as Xenia Leasing Company's tenant) to Andrew Lewis for the City-owned properties located at 100-104 N. Detroit Street. Brief discussion followed. Councilman Urschel commended staff on finding someone to reuse the property given its age and construction challenges. The Roll on this was the following:

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

D. Administrative Motion Approving the Schedule of Bills in the amount of \$188,562.19.
Mr. Duke requested the payment of bills in the amount of \$188,562.19.

President Engle entertained a motion.

Motion by Councilman Louderback, seconded by Vice President Wallace, to approve the schedule of bills in the amount of \$188,562.19. No discussion followed. The Roll on this was the following:

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

11. APPOINTED OFFICIALS REPORTS AND COUNCIL COMMENTS:

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

Mr. Merriman said Beggars Night in the City of Xenia would be on Thursday, October 31, from 6-8 p.m., which he realizes conflicts with a Xenia football game on that same evening. He noted the schedule is set by the Miami Valley Mayors and Managers Association and most of them selected the same date for the event, which is a rain or shine event unless there is a threat of very severe weather. He reminded everyone that City offices would be closed on Monday, October 14th, for a staff in-service day that includes a health fair event and training opportunities. He noted the Council and staff are wearing t-shirts for the "Turning Up the Heat on Cancer" effort to bring awareness and raise funds for those fighting cancer, which was a great collaborative effort among

area fire departments including WPAFB, Fairborn, Beavercreek, and Xenia. He extended kudos to the Xenia Fire Division for bringing awareness to this very notable cause.

Vice President Wallace said he did not know the history of the Alan Besco issue and asked Mr. Merriman for more information. Mr. Merriman said under the old zoning code, inflatables were allowed. After the new Land Development Code was approved, which included a reduction in size and number of days the inflatable could be on display, discussion ensued with representatives from the business regarding the inflatable because the previous inflatable (a dinosaur) was in need of replacement. The current inflatable eagle does not meet the standards of the current zoning code. The business was asked to apply for a variance, and BZA denied their request. Vice President Wallace thought the business would have been grandfathered. Ms. Fisher said the Land Development Code was enacted in 2016, and the eagle went up in 2017 or 2018. Vice President Wallace asked if the business was aware of the new code requirements prior to their acquisition of the eagle. Mr. Merriman said he and staff had several discussions with them, which included Councilman Louderback, so they were aware of the code. Further, the discussion included the various options available to them that complied with the code. He noted no other businesses in the City of Xenia are using this type of marketing; however, any change to the LDC would apply to any City business. Councilman Louderback said the LDC is a very cumbersome document of 288 double-sided pages. When he voted for it, he did so with the understanding that it could be changed. Vice President Wallace asked if the Council has ever sent back a recommendation to the Planning and Zoning Commission. Ms. Fisher said that's not how the charter is set up. She explained that the Planning and Zoning Commission makes recommendations to City Council. President Engle said staff is meeting with representatives from the business to discuss the matter in the near future to determine the next steps. Councilman Louderback concurred. As he previously stated, changes can be made and the code can be tweaked to include changing the amount of days, the height, etc. He was confident that a compromise could be achieved. Hopefully, they can all come together to keep the eagle flying. Councilman Smith asked if the variance was requested at the last BZA meeting. Ms. Fisher concurred. Councilman Smith said BZA is a citizen-appointed board and only four members were present, and the motion resulted in a tie vote. Ms. Fisher agreed the first motion to approve the variance resulted in a 2:2 tie, and per the Charter, the Chair votes to break the tie and she voted against. Another motion was made to deny, which passed 4-0. Councilman Smith asked if the business representatives could request a change to the LDC. Ms. Fisher said BZA decisions are appealable in the Greene County Court of Common Pleas; their second option is to request a change to the code.

Mr. Duke said he did some quick research regarding the Kinsey Road paving project. He reported the application was submitted in July 2019 for OPWC funding, and the project is slated for 2020.

Ms. Fisher did not have anything further to share.

B. Mayor and City Council:

Councilman Louderback wished the Xenia Bucs football team the best of luck—they are ranked #2 in the Miami Valley. He noted what has happened this evening is the democratic process, and they are free to say what they want and when they want. He was happy to live in this country.

Councilman Smith thanked everyone for watching and attending the meeting.

Councilman Urschel commended the Xenia Fire Division union for their participation in the cancer awareness drive to raise funds for those suffering from cancer, which hits close to home. Ten years ago, his youngest son was diagnosed with stage 3 malignant melanoma, which was a death sentence back then. He and his wife were told that their son had only three months to live. Fortunately, they found a doctor in Pennsylvania who was working on experimental treatments. That doctor tried something that was not approved for children and not approved by the FDA, but it worked and now his son is cancer free. He was thankful for those who raise money and pushed hard for new cancer treatments—America is a great country because they allow that. When his son was diagnosed, he did a lot of research, and all he found was for palliative care. There was no hope and no investment in any kind of treatment. Now, the treatment that was used for his son is the standard treatment for those with melanoma with an 80% success rate. He stands with those who fight for a cure.

Councilman Urschel said he had an opportunity to meet with the director of the Unmanned Aerial Vehicles (UAV) program at Sinclair Community College and noted the new facility is world class. The meeting also included the director of the Dean of Engineering of Central State University, a representative from a new startup company, M3, that is looking to invest in Xenia to do precision agriculture using drone technology, and a representative from the U.S. Department of Agriculture. The eastern half of Greene County is agricultural, and it was a very exciting meeting. He was also excited for the career center as they step into aviation and aviation technology. Further, Central State University was declared a land grant college, which is a seven-figure investment by the State of Ohio and a tremendous benefit to this community. Regarding Annie the eagle, there have been a lot of comments, and he thanked those present for their attendance and positive demeanor. However, the law is the law. When Council passes ordinances, it's a big deal—those are Xenia's laws. Xenia is a Charter City, and Council gets to determine the laws in the City of Xenia. The Land Development Code is a law and applies to every citizen and every business in the City of Xenia. They also have the power to make changes to those laws. However, only the voters in this City change the City Charter, and Council has no say in the matter with regard to BZA decisions. He noted that the Land Development Code lists nine specific criteria in which to approve or deny a variance to Xenia laws. Perhaps those were not the right nine criteria, but that is what is in the code. The citizens who serve on BZA are just like those sitting in the audience this evening, and they have no right to operate outside the law. The process moving forward has been explained; however, any change to the Land Development Code affects every citizen and every business in the City of Xenia. He asked them to think bigger than just their own particular situation and ask if the change they are seeking is a good thing or a bad thing for the entire community. He agreed that XPZC can provide a recommendation to approve or deny, but ultimately, Council makes the final decision. Council and staff will help and collaborate with them with regard to a proposal of language for the text changes. He noted Council will hold a special session following the conclusion of the regular session this evening. He said businesses and roads are important; however, the real problem in this City is drugs. Many know what they can and cannot get away with here in Xenia, and dealing drugs and the availability of drugs is destroying the heart and soul of this City. He has talked to many, many people who know exactly where to buy drugs. He was glad everyone was worried about Annie the eagle, but he wished as many people or more were just as concerned about the drug issue. He said the ACE Drug Task Force will be present for the following special session, which is open to the public and all are welcome to attend. If the drug situation in this community does not change, they will never move forward.

Councilman Dean had nothing further to share.

Vice President Wallace concurred with Councilmen Louderback and Urschel. He was glad to see the audience full of people who were here to support the Alan Besco business. He was a new Councilman in 2016, and he did not read every word of the new Land Development Code. However, the law can be tweaked and changed. He wants to welcome visitors and businesses. He was happy to hear that a meeting is planned to further the conversation with Alan Besco.

President Engle had nothing further to share and entertained a motion to adjourn the regular session in preparation for the special session immediately following.

12. ADJOURNMENT: Motion by Councilman Louderback, seconded by Vice President Wallace, to adjourn the meeting at 7:01 p.m. No discussion followed. The Roll on this was the following:

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

Nays: None motion carried.

Michelle D. Johnson
City Clerk

Michael D. Engle
President, Xenia City Council