

BLUE ASH CITY COUNCIL

July 8, 2010

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A regular meeting of the Council of the City of Blue Ash, Ohio, was held on July 8, 2010. Mayor Mark F. Weber called the meeting to order in Council Chambers at 7:00 PM.

**OPENING CEREMONIES**

Mayor Weber led those assembled in the Pledge of Allegiance.

**ROLL CALL**

MEMBERS PRESENT: Councilman Tom Adamec, Councilman Rick Bryan, Councilman Robert Buckman, Vice Mayor Lee Czerwonka, Councilwoman Stephanie Stoller, Councilman James Sumner, and Mayor Mark Weber

ALSO PRESENT: City Manager David Waltz, Deputy Solicitor Bryan Pacheco, Clerk of Council Jamie Eifert, Deputy Clerk of Council Sue Bennett (entered the meeting at approximately 8:30), Treasurer/Administrative Services Director James Pfeffer, Parks & Recreation Director Chuck Funk, Public Works Director Mike Duncan, Assistant Community Development Director Dan Johnson, Assistant to the City Manager Kelly Osler, and interested citizens

Mayor Weber explained that the order of items on tonight's agenda would be slightly adjusted due to a traffic conflict on I-71 affecting one of the applicants.

**PUBLIC HEARING – 7:00PM – Consideration of the 2011 Tax Budget (Resolution No. 2010-7)**

Treasurer Jim Pfeffer explained that the City is required at this time of year by State law and the Hamilton County Auditor's office to prepare a Tax Budget for the next fiscal year, including a requirement to hold a public hearing. The format for this tax budget is strictly prescribed by the County. Following consideration of that tax budget as well as the public hearing, the City is required to deliver certified copies to the Hamilton County Auditor's office no later than July 20. Mr. Pfeffer explained that although this process required by the County and State provides the Administration an early opportunity to estimate next year's revenues and expenses, it does not replace the City's traditional and more detailed budget process that occurs in the fall.

There being no questions from Council or the public, the hearing was closed at approximately 7:07PM.

**PUBLIC HEARING – 7:15PM – Consideration of a development plan for construction of a new City Barbeque restaurant at the southwest corner of Glendale-Milford/Pfeiffer and Kenwood Roads within the C-2 Planned Commercial District (Ordinance No. 2010-29)**

The Clerk was asked to read Ordinance No. 2010-29 in its entirety:

THEN WAS PRESENTED AND READ IN ITS ENTIRETY:

ORDINANCE NO. 2010-29

APPROVING A DEVELOPMENT PLAN UNDER CHAPTERS 1157 AND 1185 OF THE CODIFIED ORDINANCES FOR CONSTRUCTION OF A NEW CITY BARBEQUE RESTAURANT AT THE SOUTHWEST CORNER OF GLENDALE-MILFORD/PFEIFFER AND KENWOOD ROADS WITHIN THE C-2 PLANNED COMMERCIAL DISTRICT, INCLUDING DEMOLITION OF EXISTING BUILDINGS (ROMBES RESTAURANT AND FORMER JIFFY LUBE)

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Mr. Don Feibel, representing City Barbeque restaurant based in Columbus, Ohio, thanked Council for the opportunity to be here tonight. He explained that for the past three years, City Barbeque has been looking for a suitable location for a restaurant in Blue Ash. They have been working with the City Community Development staff for the past several weeks, and have addressed all concerns and issues regarding this proposed location at Glendale-Milford/Pfeiffer and Kenwood Roads. He explained that much discussion has occurred regarding access off Kenwood Road. Currently there are three Kenwood Road points of access: one at the former Jiffy Lube, one at the southern end of the Rombes property, and one closer to the Kenwood/Glendale-Milford intersection. The plan shows elimination of the middle curb cut and limitation of the curb cut towards the intersection to a right-hand turn only. Traffic traveling east on Glendale-Milford Road would access this site through the Rombes Station retail strip immediately adjacent to this location. He explained the intent to secure and record crossover easements with that adjoining retail strip. The plan shows an excess of required parking – 30% over what the Code would require for this project.

In addressing a question from Councilman Bryan, Mr. Feibel explained that they have not yet closed on the property needed for this development; however, contracts have been secured. They are currently in the process of completing environmental studies on the Jiffy Lube property, and once that is finalized (pending no major environmental concerns), the intent is to move forward with purchase of that property. The intent is to enter into a long-term ground lease with the Rombes to include both the current Rombes property as well as the Jiffy Lube property (which would be deeded to the Rombes). They have already completed the demographic studies and negotiated the terms of the ground lease. Though timing is depending upon completion of the environmental report on the Jiffy Lube property, their hope is to start construction before the end of the year and open next spring.

In addressing a question from Councilman Adamec, Mr. Feibel confirmed that they believe the northern-most access (right-in only) is important for the development since it would provide the means for access of those traveling westbound on Glendale-Milford Road (after turning left heading, southbound onto Kenwood). Those traveling eastbound would access the development through the retail area, which is the reason for securing the crossover easements with that property. In regards to lighting, they have worked with the staff and have gone to great effort to make sure the lighting on this site does not encroach on the residential property located to the south. They have followed all staff recommendations related to the potential of pedestrian traffic, though they do not anticipate a large percentage of their business to be pedestrian oriented.

In addressing a question from Council, Assistant Community Development Director Dan Johnson explained that one of the Planning Commission's major concerns was the appearance of the building's southern elevation, visible to Kenwood Road traffic heading northbound. The recommendation was to break up the materials to enhance the appearance. Also, the Commission discussed the buffer between this property and the residential area to the south. The plan shows that the existing fence (on the Jiffy Lube property) would remain, and two rows of evergreens or a brick wall would be placed.

Councilman Sumner confirmed that this project was reviewed extensively at Planning Commission, including much discussion on the project's overall design, materials, and lighting. The Commission approved of it unanimously. He noted that the access drive closest to the intersection at one time was much further away from the intersection; however, the City's road improvements over the years have made that access closer to the intersection. He explained two observations that persuaded the Commission members to encourage that driveway be allowed: there appears to be no issue with that access today in terms of accident history, and that access is required in association with enhancement of the crossover easements to be secured. He added that the Commission also noted their preference for the fence on the Jiffy Lube site to remain, and that the buffer between this and the residential property to the south be a natural landscaping buffer, as compared to a brick wall. Councilman Sumner noted that the Commission was strongly in support of this development.

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Peter Nord, President of Kenridge Lake Neighborhood, noted that he has heard no negative comments from his neighborhood regarding this new proposed restaurant -- other than the fact that the Rombes delicious Greek salad will be sorely missed. He wished the Rombes and City Barbeque representatives the best of luck.

There being no further discussion, the hearing was closed at approximately 7:27PM.

**NOTE REGARDING OLD PFEIFFER LANE REZONING AND DEVELOPMENT APPLICATIONS: The applicant has WITHDRAWN the application requests; therefore, public hearings previously scheduled for this meeting on two related ordinances will NOT be held.**

Mayor Weber noted that since the developer for the potential Old Pfeiffer Lane commercial development has formally withdrawn his applications, there is no need tonight for public hearings previously scheduled related to those applications.

**HEARING – Consideration of an appeal relating to a decision of the Board of Zoning Appeals regarding denial of a request to modify an existing legal, non-conforming sign in the M-4 District**

The legal counsel of the applicant who was now present at the meeting explained that he was detained in heavy traffic on I-71 this evening, and was not able to pick up his client. His client's wife is attempting to pick him up now and to bring him to City Hall. Mayor Weber noted that this item would be delayed to later in the meeting.

Mayor Weber appointed Kelly Osler to read the legislation (ordinances) in their entirety in the rear of Council Chambers.

**ACCEPTANCE OF AGENDA**

Vice Mayor Czerwonka moved, Councilwoman Stoller seconded to accept the agenda. A voice vote was taken. All members present voted yes. Motion carried.

"1. MEETING CALLED TO ORDER

2. OPENING CEREMONIES

3. ROLL CALL - Clerk of Council Jamie K. Eifert

4. HEARING – Consideration of an appeal relating to a decision of the Board of Zoning Appeals regarding denial of a request to modify an existing legal, non-conforming sign in the M-4 District

5. PUBLIC HEARING – 7:00PM – Consideration of the 2011 Tax Budget (Resolution No. 2010-7)

6. **NOTE REGARDING OLD PFEIFFER LANE REZONING AND DEVELOPMENT APPLICATIONS:** The applicant has **WITHDRAWN** the application requests; therefore, public hearings previously scheduled for this meeting on two related ordinances will NOT be held.

7. PUBLIC HEARING – 7:15PM – Consideration of a development plan for construction of a new City Barbeque restaurant at the southwest corner of Glendale-Milford/Pfeiffer and Kenwood Roads within the C-2 Planned Commercial District (Ordinance No. 2010-29)

8. APPOINTMENT OF PERSON(S) TO READ ORDINANCES IN FULL IN REAR OF COUNCIL CHAMBERS

9. ACCEPTANCE OF AGENDA

10. APPROVAL OF MINUTES

a. Regular Meeting of June 10, 2010

11. COMMUNICATIONS

a. Communications to Council - Clerk of Council Jamie K. Eifert

b. Reports From Outside Agencies

c. Mayor's Report – June 2010 – Honorable Mark F. Weber

d. Financial Report – Motion to accept the report for June 2010

12. HEARINGS FROM CITIZENS

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13. COMMITTEE REPORTS

- a. Planning & Zoning Committee, James W. Sumner, Chairperson
  - 1. Ordinance No. 2010-29, approving a development plan for construction of a new City Barbeque restaurant at the southwest corner of Glendale-Milford/Pfeiffer and Kenwood Roads within the C-2 Planned Commercial District
- b. Finance & Administration Committee, Rick Bryan, Chairperson
  - 1. Resolution No. 2010-7, approving the 2011 Tax Budget
  - 2. Ordinance No. 2010-31, transferring funds
  - 3. Ordinance No. 2010-30, amending portions of Chapters 131 & 135 of the Blue Ash Code of Ordinances
- c. Parks & Recreation Committee, Robert J. Buckman, Jr., Chairperson
  - 1. Ordinance No. 2010-32, awarding bid for the Golf Course 18-hole irrigation system replacement project
- d. Public Works Committee, Thomas C. Adamec, Chairperson
  - 1. Ordinance No. 2010-34, awarding bid for the 2010 paving program
  - 2. Ordinance No. 2010-36, awarding bid for the 2010 sidewalk program
  - 3. Motion rejecting bid received for the 2010 microsurfacing program
  - 4. Ordinance No. 2010-37, authorizing acceptance of a grant of easement from Ethicon Endo-Surgery (related to the 2010 sidewalk program)
  - 5. Ordinance No. 2010-38, authorizing acceptance of a grant of easement from Embassy Suites (related to the 2010 sidewalk program)
  - 6. Ordinance No. 2010-39, authorizing acceptance of a grant of easement from Duke Realty (related to the 2010 sidewalk program)
- e. Public Safety Committee, Stephanie Stoller, Chairperson
  - 1. Ordinance No. 2010-40, authorizing general updates to the Blue Ash Code of Ordinances (Chapter 3, Traffic, & Chapter 5, General Offenses)

14. MISCELLANEOUS BUSINESS

15. ADJOURNMENT"

**APPROVAL OF MINUTES**

Councilman Bryan moved, Councilman Buckman seconded to approve the minutes of the regular meeting of June 10, 2010. A voice vote was taken. All members present voted yes. Motion carried.

**COMMUNICATIONS**

**Communications to Council**

There were no communications presented to Council.

**Reports From Outside Agencies**

There were no representatives from outside agencies present at the meeting.

**Mayor's Report – June 2010**

RECEIPTS:

Fines .....	\$ 19,072.00
Vendor Permits .....	\$340.00
Bonds carried over .....	\$0
Restitution Payment collected .....	\$340.00
Bonds collected .....	\$ 400.00
TOTAL RECEIPTS: .....	\$20,152.00

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DISBURSEMENTS:

To Blue Ash (fines/costs/interest/Expungements/forfeitures) .....	\$12,003.00
To the State of OH:	
Victims of Crime .....	\$1,406.00
General Rev Fund.....	\$3,380.00
Indigent Defense Support fund.....	\$246.45
Drug Law Enforcement Fund .....	\$557.80
Justice Program Service Fund .....	\$17.25
Indigent Driver's Alcohol Treat't Fund .....	\$821.50
Seat Belts .....	\$940.00
Refund of overpaid fines.....	\$40.00
Bond Money applied .....	\$0
Bond Money returned .....	\$400.00
Restitution payment.....	\$340.00
<b>TOTAL DISBURSEMENTS.....</b>	<b>\$20,152.00</b>

BALANCE IN BONDS: .....	\$ 0
Mayor's Court traffic citations .....	125
Mayor's Court criminal citations .....	9
Total Mayor's Court cases .....	134
June rev. from Mayor's Ct. Cases:.....	\$12,003.00

**Financial Report – June 2010**

Councilman Bryan moved, Councilman Buckman seconded to accept the Financial Report for June 2010 as submitted. A voice vote was taken. All members present voted yes. Motion carried.

**CITY OF BLUE ASH FINANCIAL POSITION STATEMENT- MONTH ENDING JUNE 30, 2010**

MONTH TO DATE	2009	2010
START OF MONTH FUND BALANCE: 6-1-10	\$22,076,829.05	\$22,959,511.78
<u>Revenues:</u>		
Earnings Tax Collections:	2,179,754.75	1,828,226.12
Debt Financing (long term)	0	0
Debt Financing (short term)	0	0
Other Revenue Received:	855,588.56	815,970.86
= Total Monthly Receipts	3,035,343.31	2,644,196.98
<u>Expenditures:</u>		
Lon Term Debt Retirement	1,000,000.00	1,126,320.48
Short term debt refinancing	0	0
Other Expenditures:	3,083,584.41	2,451,496.87
= Total Monthly Expenditures:	-4,083,584.41	-3,577,817.35
END OF MONTH FUND BALANCE: 6-30-10	21,028,587.95	22,025,891.41
YEAR TO DATE	2009	2010
START OF MONTH FUND BALANCE: 6-1-10	21,919,948.20	19,339,082.19
<u>Revenues:</u>		
Earnings Tax Collections:	15,498,529.01	14,980,378.41
Debt Financing (long term)	0	0
Debt Financing (short term)	0	0
Other Revenue Received:	6,005,248.76	5,186,103.53
= Total YTD Receipts	21,503,777.77	20,166,481.94
<u>Expenditures:</u>		
Long term Debt Retirement	0	72,250.00
Short term debt refinancing	0	0
Other Expenditures:	21,395,138.02	16,281,102.24
	-22,395,138.02	-17,479,672.72
YEAR-TO-DATE FUND BALANCE:	21,028,587.95	22,025,891.41

100% of the fund balance was invested as of 6/30/10. Interest paid to date on matured investments: \$10,146.81. Receipt and expenditure figures do not include interfund transfers.

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BLUE ASH INCOME TAX DIV. INCOME TAX RECEIPT SUMMARY - MONTH ENDING JUNE 30, 2010			
MONTH-TO-DATE STATUS	2009	2010	
Business Net Profit	381,938.56	224,896.37	
Resident Net Profit	72,684.68	42,872.31	
Non-Resident Net Profit	22,166.23	10,126.78	
Subcontractor Net Profit	3,222.12	1,317.00	
Net Profit Total		480,011.59	279,212.46
Withholding	1,688,452.42	1,532,651.08	
Subcontractor Withholding	11,290.74	16,362.58	
Withholding Total		1,699,743.16	1,549,013.66
Monthly Collection Totals		2,179,754.75	1,828,266.12 (-16.13%)
<b>YEAR TO DATE STATUS</b>			
Business Net Profit	\$2,642,822.62	2,510,908.28	
Resident Net Profit	639,931.80	585,365.84	
Non-Resident Net Profit	167,123.83	115,337.18	
Subcontractor Net Profit	31,078.97	18,485.40	
Net Profit Total		3,480,957.22	3,230,096.70
Withholding	11,806,448.43	11,514,872.91	
Subcontractor Withholding	211,123.36	235,408.80	
Withholding Total		12,017,571.79	11,750,281.71
YTD Collection Totals		15,498,529.01	14,980,378.41 (-3.34%)
YTD Refund Totals		934,696.60	755,294.66 (-19.19%)

**HEARINGS FROM CITIZENS**

Ms. Marcallene Shockey, 4916 Myrtle Avenue, expressed dismay at the decision to move the annual dog day at the pool event to Labor Day. She suggested that instead of the dog day event taking over the pool the entirety of that day that the pool be open to the public from 10AM to 4PM, and then schedule the dog day event after 4PM. She also suggested that the pool be open the week after Memorial Day as well as the entire week after Labor Day.

Parks & Recreation Director Chuck Funk explained that in past years, the dog day event has been held the Saturday after Labor Day. However, the decision was made to move the dog day event to Labor Day this year due to the challenge of keeping the pool open after Labor Day, and to maintain enough staff, especially lifeguards, to work the event since many will have had to return to college. In addition, moving that event to Labor Day eliminates only one day of open swim to the public, while saving thousands of dollars in added cost if the event were delayed to the next weekend. He added that to his knowledge, over the past 18 years, the pool has never been open the week after Memorial Day and the week after Labor Day. Mr. Funk commented that he would discuss with his staff Mrs. Shockey’s suggestion of having the dog day event after 4PM on Labor Day and promised to get back with Mrs. Shockey.

Jim Dyer, 5275 Myerdale, commented that there is an error in Ordinance No. 2010-32 in relation to its “emergency” explanation. The reason for the emergency should note the golf improvements project, not the Recreation Center project given the subject of the ordinance (Golf Course irrigation project).

**COMMITTEE REPORTS**

Prior to the Council meeting, Council members received the following report describing agenda items:

“The following offers a brief description of the items included on the July 8 Council agenda:

**Item 4 - Hearing – Consideration of an appeal relating to a decision of the Board of Zoning Appeals regarding denial of a request to modify an existing legal, non-conforming sign in the M-4 District**

The City is in receipt of a request from legal counsel representing Bernard Clarke to appeal a decision of the Board of Zoning Appeals relating to their denial to allow modification to an existing legal, non-conforming ground sign located on Mr. Clarke’s property within the M-4 District on Deerfield Road. Council passed a formal motion at the June Council meeting setting the hearing for the July 8<sup>th</sup>

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meeting.

At the May 10th Board of Zoning Appeals meeting, the Board denied a request for modification of an existing sign located in an M-4 district at 11573 Deerfield Road. The applicant desired to change the billboard from a static display to an electronic message sign (digital sign or display). The existing sign was permitted by the City in the 1980s. This type of sign (a pole sign) and any sign this large (anything larger than 100 square feet or taller than eight feet) is no longer permitted; therefore, the existing sign is considered legal but nonconforming.

On March 10, 2010, the appellant applied for a building permit to replace the existing sign face with a digital sign. The application was denied because the Code does not permit changes to a legal, nonconforming sign other than for routine maintenance or changes in copy (reference Section 1181.05[n]). An appeal went to the Board of Zoning Appeals at their May 10th meeting, and the Board unanimously voted to deny the appeal (all five members were present). Section 1133.03(b) of the Blue Ash Code describes the applicant's right to appeal this issue next to City Council, representing the purpose of Thursday's hearing.

In its letter requesting this hearing, legal counsel for the appellant stated the following:

"The decision of the Board of Zoning Appeals was unreasonable in that the sign in question is, in its current dimensions, legal and non-conforming. The Board of Zoning Appeals decision states that the Board not vary the sign regulations since 'the sign is a pole sign that significantly exceeds the allowable sign area regulations.' The Board fails to give a reasonable basis for its decision given that the sign exists legally in excess of the allowable sign area regulations and said dimensions will not change. Appellant wishes to upgrade the sign from a static display to an electronic, digital sign. No other change to said sign will occur with regard to dimensions or affixture to land. Appellant's proposed upgrade will not affect the City of Blue Ash in any significant manner, as the sign faces away from the City of Blue Ash and will not detract from the neighborhood nor the City in general nor the public welfare. Further, said upgrade will significantly improve the safety in maintaining said sign.

For the foregoing reasons, Bernard E. Clarke appeals the decision of the Board of Zoning Appeals to this Council for its consideration in allowing appellant to upgrade the current legal, non-conforming sign."

Questions regarding this issue may be directed to Solicitor Mark Vander Laan.

**Items 5 and 14.b.1. Public Hearing and consideration of the 2011 Tax Budget (Resolution No. 2010-7)**

In keeping with the requirements of the State of Ohio and the Hamilton County Auditor's Office, it is necessary for the City of Blue Ash to prepare a Tax Budget for 2011.

A number of years ago, the outcome of this annual process would have been utilized by Hamilton County to apportion how much of the State-funded Local Government Fund each of the entities would have received. That allocation process is now governed by an alternative formula directing the distribution of these funds without reliance on Tax Budget info. Hamilton County still requires the annual preparation of a Tax Budget, as the financial information contained within each budget is utilized by the Hamilton County Auditor's Office (Budget & Settlement Division) to assure that cities, villages, and townships are planning appropriately for the upcoming year, and that the revenue and expenditure projections are within reasonable limits based upon the information available at the time the budget is prepared.

As required, a legal notice appeared on June 2nd advertising the availability of the Tax Budget for public inspection at the Municipal & Safety Center starting July 1, and a public hearing regarding the Tax Budget will be held towards the beginning of the July 8 Council meeting. Following consideration and acceptance of the Budget by City Council, certified copies must be delivered to the County no later than July 20. Although this process is of some benefit to the City in defining the broad parameters anticipated for the upcoming year, the Tax Budget format does not serve as a substitute for the preparation of a more detailed Proposed Budget for 2011.

A copy of the 2011 Tax Budget is included in Council packets (attached to the resolution). The format is determined by the County Auditor's Office, and includes actual "cash basis" performance or historical data for the accounting years 2008 and 2009. The estimates used for 2010 generally match the City's adopted 2010 Final Budget, with some adjustments necessary as to recent estimates of

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earnings tax collections, and the shifting of some capital items and projects in response to the economic climate.

Earlier this year, the City Manager expressed to Council and to the Finance team an interest in utilizing this mid-year tax budget process in a more beneficial manner to “fine tune,” analyze or prepare for the 2011 budget. However, the Hamilton County Auditor’s “required” format, and the presentation utilized in the Tax Budget, conflicted with that objective, and the Deputy Treasurer moved forward with the preparation of the Tax Budget consistent with the process utilized in past years.

As Council is aware, the City Manager has been working with the Administration since his arrival at Blue Ash on evaluating and monitoring operational results, and working toward a more “sustainable” level of operational expense given the City’s maturing status and leveling of incoming revenues. First, the process involved capturing historical data for comparative purposes, evaluating that information, utilizing that data in the preparation of the proposed budget each year, and in evaluating the City’s operational status in advance of each upcoming budget year. As the current economic crisis became evident and deepened, the focus shifted from an annual recap to a quarterly determination of our progress in monitoring operational costs, to the City Manager’s current request that we evaluate 2011 under varying economic scenarios, and to attempt to utilize the Tax Budget to do so.

Although the Tax Budget process was not flexible enough to accommodate his objective, the City Manager has been working with the Finance team well in advance of the traditional fall budget process so that the entire management group is aware of the status, ongoing economic conditions, and the outcomes that should be expected under a range of economic scenarios for 2011. As a result of this effort, we should know far in advance of the budgetary process this fall what 2011 will look like, thus simplifying the process for all, and assuring a conservative budget that is a step closer to continued financial stability and sustainability.

The Tax Budget, which truly is the focus of the legislation and public hearing described on the agenda, utilizes the information contained in the existing 2010 budgetary appropriations, allowing for a minor change in earnings tax collection projections, and potentially some shifts in the timing of 2010 capital improvements. Included within the presentation are actual results for 2008 & 2009, to assist in evaluating the direction anticipated in 2011.

The Deputy Treasurer projected that our combined earnings tax collections during the entirety of 2010 will end up better than the anticipated 4% drop from 2009 actual levels. Earnings tax collections, as reflected on Exhibit 1 of the Tax Budget, show only a 2.2% reduction for 2010, and include an expected 1.6% increase in earnings tax collections for 2011. Refund amounts remain unchanged from 2009 at an estimated \$1,325,000. Other revenues are very much in line with historical collection levels, with no unusual items defined.

On the expenditure side, an increase in the salary and benefit area was included in the calculations, using approximately 2%, given existing bargaining commitments, etc. However, the overall impact of the increase in the salary and benefits area was greatly offset through the “elimination” of the 27<sup>th</sup> payroll which was included in the 2010 expenditures. The staffing levels remain consistent with the City’s intent to lower operating costs, reflecting no increase in personnel in the Tax Budget calculations from those in effect in 2010.

Routine operating costs were held essentially level with 2010 amounts, except in those areas where there was a known factor impacting expected costs next year.

The anticipated capital for 2011 is itemized on page 9, or Exhibit 4, reflecting \$500,000 in investment in the traditional road paving program; supplemental paving in conjunction with the Water Works projects in an amount in excess of \$900,000; a continuation of the City’s connectivity efforts through sidewalks and bikepaths of \$700,000; a Phase II commitment of \$250,000 to downtown area improvements; and just over \$700,000 for the replacement of routine capital items consistent with our traditional level of expense (police cars, mowers, replacement equipment, etc.).

Additionally, Issue 15 funding of almost \$1.6 million is included to provide the necessary advance to the City of Cincinnati for 2011 remediation efforts on the Airport property, as well as the required \$1,000,000 land payment per our 30-year agreement. No supplemental funding is shown being directed toward Fund #447 related to the golf course project as those projects are expected to be fully funded through the issuance of bonds in the fall of 2010.

The Tax Budget, as presented, indicates that 2011 will closely parallel 2010 in terms of revenues and operating expenses, although it is expected that operational costs will show some improvement

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through the focused efforts of the City Council and the Administration, given the benefits provided through the recent ICMA analysis, citizen survey, etc.

As a comparative illustration, the City's unencumbered General Fund balance as of June 30, 2010 is \$15,108,300. Based upon the Tax Budget, we anticipate that balance to end up in the range of \$14,100,000 at the end of 2010 (most debt retirement happens in the fall) and to actually increase to about \$15,300,000 at the end of 2011. This General Fund balance represents all General Fund resources, including the General Reserve, the Issue 15 Reserve, and any unreserved or unallocated balances in that account.

The Tax Budget process, in its required format, is somewhat flawed in estimating a year-end General Fund balance. It assumes all revenues will come in as planned and that all originally budgeted expenses and capital purchases will occur. Generally, not all projects get completed, resulting in a greater balance at year end. However, those balances or reserves must be used or absorbed the following year to do the projects at that time.

Collectively, we are working to more closely examine our position as of June 30, 2010, and what will most likely happen in the remainder of 2010. This process, being done well in advance of the "traditional" fall budget, will keep us ahead of the game and prepared to respond quickly should the anticipated "economic recovery" not materialize, or, on a more positive note, recover more quickly than current data would seem to indicate. By using past operational revenue and expense "outcomes" on past actual performance, we can quantify our ability to generate adequate "gain" to retire debt, and fully fund annual routine capital without drawing down reserves. Thus, we should be able to model 2011 projections to see how much additional review, or reduced operational expense, would be needed to reach the first level of fiscal sustainability. Subsequent efforts would then have to be found on not only covering all operating expenses and capital routine capital, but rebuilding non-Issue 15 reserves.

Please direct questions regarding the Tax Budget to the Treasurer.

**Item 6. NOTE REGARDING OLD PFEIFFER LANE REZONING AND DEVELOPMENT**

**APPLICATIONS: The applicant has WITHDRAWN the application requests; therefore, public hearings previously scheduled for this meeting on two related ordinances will NOT be held.**

The City received notice from the applicant on July 1 that he wishes to withdraw the application for rezoning (and in effect, the planned development as well). Therefore, the public hearings and related legislation associated with that potential development have been removed from this agenda.

**Items 7 and 13.a.3. Ordinance No. 2010-29 - consideration of a development plan for construction of a new City Barbeque restaurant at the southwest corner of Glendale-Milford/Pfeiffer and Kenwood Roads within the C-2 Planned Commercial District**

The City is in receipt of an application for the construction of a new City BBQ restaurant at the site that currently houses the Rombes restaurant and the currently vacant property to its south, the former Jiffy Lube on Kenwood Road.

The applicant seeks approval of a Planned Development for construction of a 4,130 square foot City Barbeque restaurant on about .8 acres within the existing C-2 Planned Commercial District. The existing Rombes restaurant and former Jiffy Lube building would be razed, and the lots consolidated. The plans do not include a drive-through, and there is a fenced outdoor seating area proposed. The proposed parking area includes sufficient spaces for the restaurant on the same site, and the applicant also plans to secure easements to allow overflow parking available on the adjacent multi-tenant building site. Three existing drives on Kenwood would be consolidated into one drive at the south edge of the site, as far from the intersection as is possible.

The applicant is expected to be at Thursday's meeting to address questions from Council and the public, and more detailed plans and information will be posted for Council's and the public's review.

Questions may be directed to Dan Johnson at [djohnson@blueash.com](mailto:djohnson@blueash.com) or to Dan at 745-8528.

**Item 13.b.2. Ordinance No. 2010-31 – Transferring funds**

When the budget was finalized for 2010, funding of \$650,000 was directed from the Issue 15 reserve toward the Golf Course construction fund #447 to pay for finalized building, path, and irrigation design and engineering. At that time, the decision relating to moving forward with the bidding and construction of the components of the improvement project was deferred until later in the year. Based upon the outcome of recent timing discussions, the need exists to provide supplemental funding to this

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project account to cover the expected award of the irrigation component, and provide supplemental funding for moving forward with the path and building parts of the project. The only items reflected on the transfer attachment relate to Fund #447 and the need to provide this supplemental funding. At this time, a transfer has been set up, as shown on the attachment, to shift an additional \$1,300,000 from Issue 15 funding to the construction fund #447, which will allow continued progress towards the other components and permit the full funding of the irrigation project described under Ordinance No. 2010-32.

Because City Council passed a resolution of reimbursement relating to this project a number of months ago, the entirety of this transfer amount can be “recaptured” or replenished to the Issue 15 reserve upon the issuance of the general obligation bond for this project expected in August of this year. Because of the passage of that resolution, the City should also be able to recover approximately \$300,000 of the original budgetary funding to this area at a later date. Essentially, the reimbursement resolution permitted the transfer of this supplemental funding out of current reserves so that it may be replenished upon the issuance of debt in August.

Please direct questions regarding the transfer to the Treasurer.

**Item 13.b.3. Ordinance No. 2010-30 – Amending portions of Chapters 131 and 135 of the Blue Ash Code of Ordinances**

Ordinance No. 2010-30 amends certain sections of Chapters 131 and 135 of the Code of ordinances affecting changes relating to the Position Classification Plan (within Chapter 131) and issues involving both part-time Fire and EMS personnel, as well as part-time Police personnel. A summary of the recommended changes is shown below:

**Amending Sections 131.07- 1 of the Blue Ash Code of Ordinances to reflect changes to the Position Classification Plan**

- Expands the pay range of the Recreation/Sport Superintendent upwards one grade, commensurate with the current level of responsibility of this position.

**Amending Sections 131.07- 2(a) of the Blue Ash Code of Ordinances to reflect changes to the Position Classification Plan**

- Amends the position classification plan regarding part-time Fire and EMS employees, allowing for a supplemental “event” pay when authorized by the City Manager and subject to Fire Department Policy and Procedure. This supplemental pay will encourage more part-time personnel to work the schedule during specified seasonal events, thereby improving our service and efficiency to the public. (This is the item discussed by the City Manager with Council at the June 10 Council meeting.)
- Addition of the position of Police Technician (131.07-41). This job description does not involve the creation a new position, nor does it increase staffing levels. Rather, it allows for a more economical reorganization of the part-time police function by breaking out responsibilities that can be managed by non-sworn personnel.

**Amending Section 135.02 of the Blue Ash Code of Ordinances to reflect changes in the Eligibility of Benefits for Part-time Fire and EMS employees.**

- Amends the section relating to benefits for part-time Fire and EMS employees. Offering single only health coverage benefits gives the Blue Ash Fire Department an advantage in hiring part-time employees in today’s market. However, to remain competitive we do find a need to be more flexible in the number of hours an employee is required to work per pay plan year to qualify for this insurance coverage. Consequently, the number of hours per year requirement expressed in the code has been removed from the ordinance and future eligibility will be managed according to policy which will more efficiently align our needs to the recruiting market.

Questions regarding the recommended changes can be directed to the Treasurer.

**Item 13.c.1. Ordinance No. 2010-32 – Awarding bid for the Golf Course 18-hole irrigation system replacement project**

Bids were recently solicited for the replacement of the existing 18-hole irrigation system at the Golf Course – representing the first step in improvements planned for the Course. Bids were publicly advertised (and included on the City’s website), were publicly opened on July 1, and subsequently reviewed.

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Six bids were received from four states. The project team is recommending the City accept the bid (which also represents the lowest bid) to Mike Yerkes, The Southern Group, based in Hamilton, Ohio, for the Toro multi-row irrigation system with a decoder control system for a base amount of \$886,635, plus \$23,150 for the alternate refill line, less a credit of \$32,000 for the existing control system. The project team is also recommending an additional approximately \$20,000 be authorized to for potential adjustment to accommodate unforeseen field changes. Given this additional amount, the total amount authorized in the ordinance is not to exceed \$898,000.

It is expected that work on the irrigation system will begin in August and be complete by mid April. Work continues towards finalization of specifications and plans associated with the other components of the golf course improvements, the cart path replacement and construction of the new multi-functional clubhouse/banquet facility.

Please direct questions regarding this ordinance to the Parks & Recreation Director.

**Item 13.d.1. Ordinance No. 2010-34 – Awarding bid for the 2010 paving program**

The 2010 Paving Program proposes to resurface some residential streets and the Golf Maintenance parking lot by milling the existing surface course of asphalt and replacing it with new asphalt. The project was structured with a base bid and an alternate bid; however, the recommended contract award is based upon the base bid amounts only in accordance with ODOT guidelines.

The base bid includes repairs and resurfacing of Carpenter's Run near Plainfield Road and the repaving of the Golf Maintenance parking lot. The base bid also includes the streets of Brentwood, Carpenter's Ridge, Fallen Branch, Falling Brook, Muirfield and Woodcreek. The resurfacing of the last four of these streets is to correct a problem from last year that was created when a surface sealer was applied over microsurfacing. The combination of these materials has resulted in a soft surface on these roadways that should be removed. The only viable method to remove the material is to mill the surface and repave the roadway.

The Alternate 1 bid item includes Brittany, Cynthia, Elizabeth, Leadwell, Summit and Tillsam. These streets are the same streets that are proposed in the 2010 Microsurfacing Program and are listed as a bid Alternate on the 2010 Paving Program to compare the costs of resurfacing to that of microsurfacing. Due to the extensive repairs needed to prepare the streets for microsurfacing, the repaving costs are comparable; therefore, these streets should be repaved under Alternate 1 instead of microsurfaced.

Bids for the 2010 Paving Program were opened on July 1, 2010. Four bids were received with the following results for both the Base Bid and Alternate 1:

BIDDER	BASE BID	ALTERNATE 1
Mt. Pleasant Blacktopping	\$150,344.40	\$86,919.50
Barrett Paving Materials	\$152,194.04	\$85,033
J.K. Meurer Corp.	\$152,372.84	\$90,246.50
John R. Jurgensen	\$154,749.08	\$84,295.50

The Base Bid is approximately \$21,000 under the Engineer's Estimate and Alternate 1 is approximately \$45,000 under the Engineer's Estimate. Following ODOT guidelines for awarding contracts on the basis of the Base Bid amount, Mt. Pleasant Blacktopping Co. Inc is recommended for award of the contract for the 2010 Paving Program at the unit prices indicated in the bid proposal. Alternate 1 is recommended to be included in the 2010 Paving Program. Although this company has not completed roadway projects in Blue Ash, other area jurisdictions have been satisfied with their paving projects.

Please direct questions regarding this ordinance to the Public Works Director.

**Item 13.d.2. Ordinance No. 2010-36 - Awarding bid for the 2010 sidewalk program**

The 2010 Sidewalk Program continues the City's emphasis on providing connectivity throughout the City for pedestrians and recreational bicyclists. The program proposes to construct an eight-foot wide concrete path on the west side of Reed Hartman Highway between Glendale-Milford Road and Creek Road, thus providing a connection between the existing wide sidewalks/paths on these two roadways.

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The 2010 Sidewalk Program also proposes to construct an eight-foot wide concrete path on the south side of Cooper Road between Plainfield Road and Reed Hartman Highway. This path will replace the existing roadway shoulder and will be adjacent to new curb and gutter along the length of this section of roadway, providing a safer pedestrian/bicyclist facility than the existing shoulder. Additionally, curb and gutter will be added to the north side of Cooper Road between Timbers Drive and Reed Hartman Highway to provide a complete curb and gutter section along this section of Cooper Road. The asphalt surface will be re-profiled to provide for better drainage. This new sidewalk will connect to the existing sidewalk on Cooper Road and to the 8' path along Plainfield Road by Raymond Walters College. This new path will also connect to the new path along the east side of Plainfield Road between Cooper Road and Glendale-Milford Road that is programmed to be constructed in 2012.

Bids for the 2010 Sidewalk Program were opened on July 1, 2010. Four bids were received with the following results:

- R.A. Miller Construction Co. .... \$533,499.75
- Adleta Construction ..... \$596,056.25
- Trend Construction ..... \$617,042.00
- Prus Construction ..... \$650,413.00

The low bid is \$50,000 under the Engineer's Estimate. R.A. Miller Construction Company has completed satisfactory work in Blue Ash in the past and is recommended for award of the contract for the 2010 Sidewalk Program at the unit prices indicated in their bid proposal.

Please direct questions regarding this ordinance to the Public Works Director.

**Item 13.d.3. Motion rejecting bid received for the 2010 microsurfacing program**

Bids were also recently solicited for microsurfacing road work in 2010. The sole bid received (from Strawser Construction) for the 2010 Microsurfacing Program was opened on July 1, 2010, for an amount of \$84,910.50.

However, as described above under 13.d.1. (within the paving program item), it is recommended that the streets being considered for microsurfacing (Brittany, Cynthia, Elizabeth, Leadwell, Summit and Tillsam) be included within that paving bid.

Given this recommendation, and assuming Council concurrence, it would be appropriate to pass a motion formally rejecting the bid received for the microsurfacing program.

Please direct questions regarding this ordinance to the Public Works Director.

**Item 13.d.4. Ordinance No. 2010-37 - Authorizing acceptance of a grant of easement from Ethicon Endo-Surgery (related to the 2010 sidewalk program)**

In conjunction with Council's intent to improve overall "connectivity" throughout our community, and as indicated with the above ordinance awarding a related bid, capital plans in 2010 include the construction of additional sidewalk. Ordinance Nos. 2010-37, 2010-38, and 2010-39 relate to necessary easements for sidewalk planned for 2010 on the west side of Reed Hartman Highway between Glendale-Milford and Creek Roads.

All three ordinances authorize the City Manager to accept a permanent grant of easement to be donated by three corporate citizens with property in this vicinity for the construction of sidewalk by the City – Ethicon (2010-37), Embassy Suites/Nesbitt (2010-38), and Duke Realty (2010-39). The three easements affect portions of the following properties as recorded with the Hamilton County Auditor's Office records:

- Book 612, Page 160, Parcels 10 & 12 (Ethicon) – 2010-37
- Book 612, Page 160, Parcel 13 (Embassy) – 2010-38
- Book 612, Page 151, Parcels 19 & 25 (Duke Realty) – 2010-39

Questions regarding these ordinances or the sidewalk program should be directed to the Public Works Director.

**Item 13.d.5. Ordinance No. 2010-38 - Authorizing acceptance of a grant of easement from Embassy Suites (related to the 2010 sidewalk program)**

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See description above for Ordinance No. 2010-37.

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**Item 13.d.6. Ordinance No. 2010-39 - Authorizing acceptance of a grant of easement from Duke Realty (related to the 2010 sidewalk program)**

See description above for Ordinance No. 2010-37.

**Item 13.e.1. Ordinance No. 2010-40 - Authorizing general updates to the Blue Ash Code of Ordinances (Chapter 3, Traffic, & Chapter 5, General Offenses)**

Ordinance No. 2010-40 incorporates the State law changes required for the Traffic Code and for the General Offenses Code as part of the annual Code of Ordinances update. These changes mirror revisions made at the State level, bringing the City's Code in compliance with the Ohio Revised Code and the Ohio Administrative Code. The current changes have been reviewed by Dinsmore & Shohl, as well as by the Police Administration. Attached to your ordinance is a highlighted version of the sections amended or enacted, with changes highlighted in yellow.

Please direct questions regarding this ordinance to Police Lieutenant Paul Hartinger at 745-6220 or via e-mail to phartinger@blueash.com."

**Planning & Zoning Committee, James W. Sumner, Chairperson**

Councilman Sumner asked the Clerk of Council to read Ordinance No. 2010-29 by title only (it having been read in its entirety during the public hearing earlier this meeting).

THEN WAS PRESENTED AND READ BY TITLE ONLY:

ORDINANCE NO. 2010-29

APPROVING A DEVELOPMENT PLAN UNDER CHAPTERS 1157 AND 1185 OF THE CODIFIED ORDINANCES FOR CONSTRUCTION OF A NEW CITY BARBEQUE RESTAURANT AT THE SOUTHWEST CORNER OF GLENDALE-MILFORD/PFEIFFER AND KENWOOD ROADS WITHIN THE C-2 PLANNED COMMERCIAL DISTRICT, INCLUDING DEMOLITION OF EXISTING BUILDINGS (ROMBES RESTAURANT AND FORMER JIFFY LUBE)

Councilman Sumner moved, Councilman Bryan seconded to suspend the rules of Council requiring a second reading of the ordinance. The Clerk called the roll. Councilpersons Stoller, Sumner, Buckman, Czerwonka, Adamec, Bryan, and Mayor Weber voted yes. Seven yeases. Motion carried.

Councilman Sumner moved, Councilwoman Stoller seconded to adopt Ordinance No. 2010-29. There being no discussion, the Clerk called the roll. Councilpersons Sumner, Buckman, Czerwonka, Adamec, Bryan, Stoller, and Mayor Weber voted yes. Seven yeases. Ordinance No. 2010-29 passed. Councilman Sumner noted that it was sad to lose the long-time popular Rombes restaurant; however, added that the family is excited for this new restaurant. He wished the Rombes the best in the future.

**Finance & Administration Committee, Rick Bryan, Chairperson**

Councilman Bryan asked the Clerk to read Resolution No. 2010-7 by title only.

THEN WAS PRESENTED AND READ BY TITLE ONLY:

RESOLUTION NO. 2010-7

A RESOLUTION ADOPTING A 2011 TAX BUDGET

Councilman Bryan moved, Councilwoman Stoller seconded to adopt Resolution No. 2010-7. There being no discussion, the Clerk called the roll. Councilpersons Buckman, Czerwonka, Adamec, Bryan, Stoller, Sumner, and Mayor Weber voted yes. Seven yeases. Resolution No. 2010-7 passed.

Councilman Bryan asked the Clerk to read Ordinance No. 2010-31 by title only.

THEN WAS PRESENTED AND READ BY TITLE ONLY:

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ORDINANCE NO. 2010-31

PROVIDING FOR THE TRANSFER OF FUNDS AND  
AMENDMENTS WITHIN THE ANNUAL APPROPRIATION  
ORDINANCE NO. 2010-3 FOR THE YEAR 2010 (AS SHOWN  
ON ATTACHMENT); AND DECLARING AN EMERGENCY

Councilman Bryan moved, Councilman Adamec seconded to suspend the rules of Council requiring a second reading of the ordinance. The Clerk called the roll. Councilpersons Czerwonka, Adamec, Bryan, Stoller, Sumner, Buckman, and Mayor Weber voted yes. Seven yeses. Motion carried.

Councilman Bryan moved, Vice Mayor Czerwonka seconded to adopt Ordinance No. 2010-31. There being no discussion, the Clerk called the roll. Councilpersons Adamec, Bryan, Stoller, Sumner, Buckman, Czerwonka, and Mayor Weber voted yes. Seven yeses. Ordinance No. 2010-31 passed.

Councilman Bryan asked the Clerk to read Ordinance No. 2010-30 by title only.

THEN WAS PRESENTED AND READ BY TITLE ONLY:

ORDINANCE NO. 2010-30

AMENDING PORTIONS OF CHAPTERS 131 AND 135 OF  
THE BLUE ASH CODE OF ORDINANCES INCLUDING  
SECTIONS 131.07-1, 131.07-2(a), 131.07-41, AND 135.02;  
AND DECLARING AN EMERGENCY

Councilman Bryan moved, Councilwoman Stoller seconded to suspend the rules of Council requiring a second reading of the ordinance. The Clerk called the roll. Councilpersons Bryan, Stoller, Sumner, Buckman, Czerwonka, Adamec, and Mayor Weber voted yes. Seven yeses. Motion carried.

Councilman Bryan moved, Councilman Adamec seconded to adopt Ordinance No. 2010-30. There being no discussion, the Clerk called the roll. Councilpersons Stoller, Sumner, Buckman, Czerwonka, Adamec, Bryan, and Mayor Weber voted yes. Seven yeses. Ordinance No. 2010-30 passed.

**Parks & Recreation Committee, Robert J. Buckman, Jr., Chairperson**

Councilman Buckman asked the Clerk to read Ordinance No. 2010-32 by title only.

THEN WAS PRESENTED AND READ BY TITLE ONLY:

ORDINANCE NO. 2010-32

AUTHORIZING THE CITY MANAGER TO ENTER INTO A  
CONTRACT FOR THE BLUE ASH GOLF COURSE 18-HOLE  
IRRIGATION REPLACEMENT PROJECT FOR AN AMOUNT  
NOT TO EXCEED \$898,000; AND DECLARING AN  
EMERGENCY

Councilman Buckman moved, Councilman Bryan seconded to suspend the rules of Council requiring a second reading of the ordinance. The Clerk called the roll. Councilpersons Sumner, Buckman, Czerwonka, Adamec, Bryan, Stoller, and Mayor Weber voted yes. Seven yeses. Motion carried.

Councilman Buckman moved, Councilman Bryan seconded to amend Ordinance No. 2010-32 to describe the reason for the emergency being "to assure timely completion of the golf course irrigation project." Councilpersons Buckman, Czerwonka, Adamec, Bryan, Stoller, Sumner, and Mayor Weber voted yes. Seven yeses. Motion carried.

Councilman Buckman moved, Councilman Sumner seconded to adopt amended Ordinance No. 2010-32. Councilpersons Buckman, Czerwonka, Adamec, Bryan, Stoller, Sumner, and Mayor Weber voted yes. Seven yeses. Ordinance No. 2010-32 passed.

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**Public Works Committee, Thomas C. Adamec, Chairperson**

Councilman Adamec asked the Clerk to read Ordinance No. 2010-34 by title only.

THEN WAS PRESENTED AND READ BY TITLE ONLY:

ORDINANCE NO. 2010-34

AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE 2010 PAVING PROGRAM FOR THE UNIT PRICES AS SHOWN ON THE ATTACHED BID SUMMARY; AND DECLARING AN EMERGENCY

Councilman Adamec moved, Councilwoman Stoller seconded to suspend the rules of Council requiring a second reading of the ordinance. The Clerk called the roll. Councilpersons Czerwonka, Adamec, Bryan, Stoller, Sumner, Buckman, and Mayor Weber voted yes. Seven yeases. Motion carried.

Councilman Adamec moved, Vice Mayor Czerwonka seconded to adopt Ordinance No. 2010-34. In addressing questions from Council, Public Works Director Mike Duncan explained that although the recommended contractor, Mt. Pleasant Blacktopping, has not done recent work in Blue Ash, they have completed extensive work in Butler County and have received glowing reviews from the public works departments contacted to verify their work. Mr. Duncan also confirmed that the work involves "mill and fill" – milling off the old surface and placement of new asphalt. He added that the cost to microsurface as compared to repaving was not much different, thus resulting in his recommendation to repave the streets affected, which include several cul-de-sac streets in the Carpenter's Run vicinity as well as several streets in the southern portion of Blue Ash (Brittany, etc. area). There being no further discussion, the Clerk called the roll. Councilpersons Adamec, Bryan, Stoller, Sumner, Buckman, Czerwonka, and Mayor Weber voted yes. Seven yeases. Ordinance No. 2010-34 passed.

The Clerk was asked to read Ordinance No. 2010-36 by title only.

THEN WAS PRESENTED AND READ BY TITLE ONLY:

ORDINANCE NO. 2010-36

AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE 2010 SIDEWALK PROGRAM FOR THE UNIT PRICES AS SHOWN ON THE ATTACHED BID SUMMARY; AND DECLARING AN EMERGENCY

Councilman Adamec moved, Councilman Bryan seconded to suspend the rules of Council requiring a second reading of the ordinance. The Clerk called the roll. Councilpersons Bryan, Stoller, Sumner, Buckman, Czerwonka, Adamec, and Mayor Weber voted yes. Seven yeases. Motion carried.

Councilman Adamec moved, Councilwoman Stoller seconded to adopt Ordinance No. 2010-36. In addressing a question from Councilman Adamec, Mr. Duncan explained that this ordinance allows continuation of the City's connectivity goals, whereby enhancing pedestrian/bike traffic connectivity to frequently traveled areas such as public buildings, parks, downtown, etc. Two additional sections of sidewalk are planned in 2010, including on the south side of Cooper Road between Reed Hartman and Plainfield. (The hope in future years is to continue this west of Plainfield towards Evendale.) The second sidewalk planned in 2010 includes the west side of Reed Hartman Highway between Creek and Glendale-Milford. (The hope in 2011 is to continue this path southward towards Carver and Cooper Roads.) In 2010, additional path is planned for Plainfield Road between Cooper and Glendale-Milford, along with a section on Cooper west of Plainfield. In addressing a question from Councilman Buckman, Mr. Duncan explained that improvements on Hunt west of Bluewing Terrace is in the plans for future years; however, not in 2010. The topography involved with this section of bikepath is much more severe, and will be much more costly as a retaining wall would be required (an estimate of the cost of this leg of Hunt Road completed

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several years ago was \$750,000). There being no further discussion, the Clerk called the roll. Councilpersons Stoller, Sumner, Buckman, Czerwonka, Adamec, Bryan, and Mayor Weber voted yes. Seven yeases. Ordinance No. 2010-36 passed.

Councilman Adamec moved, Councilman Buckman seconded to reject the bid received from the 2010 microsurfacing program. A voice vote was taken. All members voted yes. Motion carried.

Councilman Adamec asked the Clerk to read Ordinance No. 2010-37 by title only.

THEN WAS PRESENTED AND READ BY TITLE ONLY:

ORDINANCE NO. 2010-37

AUTHORIZING THE CITY MANAGER TO ACCEPT A PERMANENT GRANT OF EASEMENT FOR THE PURPOSE OF INSTALLING A PUBLIC SIDEWALK OVER PORTIONS OF PARCELS 10 AND 12 OF BOOK 612, PAGE 160 OF THE HAMILTON COUNTY AUDITOR'S OFFICE RECORDS (LOCATED ON THE WEST SIDE OF REED HARTMAN HIGHWAY BETWEEN GLENDALE-MILFORD AND CREEK ROADS); AND DECLARING AN EMERGENCY

Councilman Adamec moved, Councilman Bryan seconded to suspend the rules of Council requiring a second reading of the ordinance. The Clerk called the roll. Councilpersons Sumner, Buckman, Czerwonka, Adamec, Bryan, Stoller, and Mayor Weber voted yes. Seven yeases. Motion carried.

Councilman Adamec moved, Councilwoman Stoller seconded to adopt Ordinance No. 2010-37. There being no discussion, the Clerk called the roll. Councilpersons Buckman, Czerwonka, Adamec, Bryan, Stoller, Sumner, and Mayor Weber voted yes. Seven yeases. Ordinance No. 2010-37 passed.

Councilman Adamec asked the Clerk to read Ordinance No. 2010-38 by title only.

THEN WAS PRESENTED AND READ BY TITLE ONLY:

ORDINANCE NO. 2010-38

AUTHORIZING THE CITY MANAGER TO ACCEPT A PERMANENT GRANT OF EASEMENT FOR THE PURPOSE OF INSTALLING A PUBLIC SIDEWALK OVER A PORTION OF PARCEL 13 OF BOOK 612, PAGE 160 OF THE HAMILTON COUNTY AUDITOR'S OFFICE RECORDS (LOCATED ON THE WEST SIDE OF REED HARTMAN HIGHWAY BETWEEN GLENDALE-MILFORD AND CREEK ROADS); AND DECLARING AN EMERGENCY

Councilman Adamec moved, Vice Mayor Czerwonka seconded to suspend the rules of Council requiring a second reading of the ordinance. The Clerk called the roll. Councilpersons Czerwonka, Adamec, Bryan, Stoller, Sumner, Buckman, and Mayor Weber voted yes. Seven yeases. Motion carried.

Councilman Adamec moved, Councilwoman Stoller seconded to adopt Ordinance No. 2010-38. There being no discussion, the Clerk called the roll. Councilpersons Adamec, Bryan, Stoller, Sumner, Buckman, Czerwonka, and Mayor Weber voted yes. Seven yeases. Ordinance No. 2010-38 passed.

Councilman Adamec asked the Clerk to read Ordinance No. 2010-39 by title only.

THEN WAS PRESENTED AND READ BY TITLE ONLY:

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ORDINANCE NO. 2010-39

AUTHORIZING THE CITY MANAGER TO ACCEPT A PERMANENT GRANT OF EASEMENT FOR THE PURPOSE OF INSTALLING A PUBLIC SIDEWALK OVER A PORTION OF PARCELS 19 AND 25 OF BOOK 612, PAGE 151 OF THE HAMILTON COUNTY AUDITOR'S OFFICE RECORDS (LOCATED ON THE WEST SIDE OF REED HARTMAN HIGHWAY BETWEEN GLENDALE-MILFORD AND CREEK ROADS); AND DECLARING AN EMERGENCY

Councilman Adamec moved, Councilman Buckman seconded to suspend the rules of Council requiring a second reading of the ordinance. The Clerk called the roll. Councilpersons Bryan, Stoller, Sumner, Buckman, Czerwonka, Adamec, and Mayor Weber voted yes. Seven yeases. Motion carried.

Councilman Adamec moved, Councilwoman Stoller seconded to adopt Ordinance No. 2010-39. In responding to a question from Councilman Bryan, Mr. Duncan explained that the businesses involved are very much in favor of placement of this sidewalk. There being no discussion, the Clerk called the roll. Councilpersons Stoller, Sumner, Buckman, Czerwonka, Adamec, Bryan, and Mayor Weber voted yes. Seven yeases. Ordinance No. 2010-39 passed.

**Public Safety Committee, Stephanie Stoller, Chairperson**

Councilwoman Stoller asked the Clerk to read Ordinance No. 2010-40 by title only.

THEN WAS PRESENTED AND READ BY TITLE ONLY:

ORDINANCE NO. 2010-40

AMENDING AND ENACTING CERTAIN SECTIONS OF PART 3 TRAFFIC CODE AND PART 5 GENERAL OFFENSES CODE OF THE CODIFIED ORDINANCES OF THE CITY OF BLUE ASH, OHIO, INCORPORATING CHANGES IN STATE LAW AND OTHER RELATED PROVISIONS AS SHOWN ON THE ATTACHMENT; AND DECLARING AN EMERGENCY

Councilwoman Stoller moved, Councilman Adamec seconded to suspend the rules of Council requiring a second reading of the ordinance. The Clerk called the roll. Councilpersons Sumner, Buckman, Czerwonka, Adamec, Bryan, Stoller, and Mayor Weber voted yes. Seven yeases. Motion carried.

Councilwoman Stoller moved, Councilman Adamec seconded to adopt Ordinance No. 2010-40. Councilwoman Stoller commented that this ordinance will bring Blue Ash's Code in compliance with the State code. There being no further discussion, the Clerk called the roll. Councilpersons Buckman, Czerwonka, Adamec, Bryan, Stoller, Sumner, and Mayor Weber voted yes. Seven yeases. Ordinance No. 2010-40 passed.

**HEARING – Consideration of an appeal relating to a decision of the Board of Zoning Appeals regarding denial of a request to modify an existing legal, non-conforming sign in the M-4 District**

With all parties now in attendance at this point of the meeting, the Mayor reintroduced this subject. He asked that whoever may be involved in testimony during this hearing to step forward and be sworn in. Mayor Weber administered the oath of office, with those involved swearing "to tell the whole truth and nothing but the truth."

Assistant Community Development Director Dan Johnson commented that information distributed to Council regarding this matter includes that associated with the original application and denial by the Board of Zoning Appeals, along with the appellant's letter requesting this appeal. He summarized that the appellant had applied for a building permit to change the face of an existing nonconforming billboard from the sign's existing static display to a digital display. The permit was denied because the Blue Ash Code states that the only

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changes allowed for nonconforming signs would be those associated with routine maintenance or changes in copy – no other changes would be allowed by the Code. The applicant then appealed this decision to the Board of Zoning Appeals, and the Board of Zoning Appeals (at its May meeting) denied the appeal.

Mr. Gary Franke, legal counsel representing Mr. Bernard Clarke, owner of the subject sign, commented that it is his understanding that the reason the permit was denied was because the pole sign exceeds the sign size regulations. The proposed digital sign will not change the size of the sign – it will only upgrade the sign and provide additional opportunity for Mr. Clarke's business (Kelly Green Landscaping) to prosper. It is their opinion that the sign does not affect any other Blue Ash property as it is on the highway, with no other adjoining property affected. The sign does not affect in a negative way the "welfare" of the City of Blue Ash. The desire of his applicant is simply to upgrade the sign to assist his business – not to affect the citizens of Blue Ash or to detract from the City or its neighborhoods. No change in the size of the sign is being requested. It is his and his client's opinion that to deny this permit would be an injustice.

Mr. Bernard Clarke noted that he has owned Kelly Green Landscaping (11573 Deerfield Road) since 1978. In addressing questions posed by his legal counsel, Mr. Clark commented that:

- Kelly Green Landscaping has done work for the City of Blue Ash in the past – about \$300,000 worth.
- The intent is not to change the size of the sign.
- The sign does not affect or abut any neighborhood or individual and does not affect adversely the public welfare of Blue Ash.
- The property is located between a railroad track and property located in Sycamore Township. When the billboard was first erected, it was within an unincorporated area which was later added to Blue Ash.

Deputy Solicitor Bryan Pacheco asked the witness questions, with responses summarized below:

- Mr. Clarke's building permit application was marked so that the box for "alteration/remodel" was checked. Mr. Clarke indicated that he is not sure if that mark was made by him or not as the City staff assisted him with completion of the application.
- Mr. Clarke noted that page 8 of the document ("Statement of Explanation Regarding Variance") is not something he prepared.
- Mr. Clarke confirmed that the letter his legal counsel, Mr. Franke, sent requesting this appeal was sent on his behalf.

Councilman Sumner commented that there is no question that this sign is located within the City of Blue Ash. It is his opinion that it does affect businesses in the surrounding areas, and will overall be visible to people in Blue Ash as well as in Sycamore Township. This sign is considered a "legal, nonconforming use," and a major question in his mind is "would this modification extend the useful life of the sign?" In addressing a question from Councilman Sumner, Mr. Clarke indicated that it would enhance the sign; however, not being an engineer, he does not know if the useful life of the sign would be extended. Mr. Clarke added that there could be many uses for the sign, including the issuance of public service messages (such as Amber alerts, weather warnings, etc.) if so desired by the City as he would be willing to work with the City towards this potential.

In addressing a question from Councilman Sumner, Deputy Solicitor Pacheco explained that the objective of a nonconforming use relates to the constitutional right a property owner has when a regulation is imposed on a land that is different from the current law. Because of this new law, the land use has become unlawful. In such cases, the law allows for a nonconforming use, indicating that this land use does not conform with the current law and

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the property owner may continue that current use for a period of time. The objective is not to allow the nonconforming use to become greater -- or to become even more nonconforming. The property owner may maintain it as it was before the law changed; however, the intent is not for that property owner to get more than what they had at the point the use became unlawful. Section 1181.05(n) of the Blue Ash Code states that all modifications to a nonconforming sign or to its messages other than changes to copy or routine maintenance are prohibited. He noted that no one is arguing the fact that this sign is nonconforming. It is his opinion that the proposed changes are considered neither "routine maintenance" or a "change in copy." The Code simply does not allow this. He noted that had this been a situation of either routine maintenance or a change in copy, Mr. Clarke would not have had to apply for a building permit – he simply would have worked with the City staff to make the allowable sign adjustments. Mr. Pacheco noted that the word "upgrade" is used throughout the documentation, including in legal counsel's letter requesting this appeal. He explained that in everyday dictionary definition (an appropriate source when no further clarification is provided), as a noun indicates that upgrade is a new version, an improved model, etc. He noted that Council's decision tonight is to determine whether the proposed upgrade is considered routine maintenance or a change in copy. In his opinion, the proposed changes fit neither of these situations, and, under the Code, it would be prohibited. A variance was not requested in this application; therefore, if the changes constitute neither routine maintenance or a change of copy, then the changes would be prohibited. If Council were to determine that the proposed changes represent a change in copy or routine maintenance, then the proposed changes would be allowable. If not, then they would not be allowable.

Mr. Franke noted that the subject sign was erected in an unincorporated area about 30 years ago. Mayor Weber noted that it appears this applicant is implying that if there are no residential properties near the sign, then the area where the sign is should be regulation free. Mayor Weber noted that although this sign may not affect people within their homes, if Council were to allow this, the situation of what would be allowed in such locations would get out of control. *(At several portions of this discussion, one or both of the representatives from the applicant responded; however, because they did not utilize the microphone available to them (as requested by City representatives throughout prior discussion), and their comments were not picked up by the microphone in place, their comments could not be heard for inclusion in these minutes.)*

Mr. Johnson indicated that electronic message signs are designated to the Planning Commission per Section 1181.05(j). However, the question tonight, and the question discussed by the Board of Zoning Appeals, is whether or not the proposed change to this sign is a permitted one. The Board of Zoning Appeals opinion was that the answer is "no" and that such changes would violate the intent of the Code.

In addressing a previous comment from the applicant indicating that this sign was first erected in Sycamore Township, Councilman Sumner commented that he recalls no Blue Ash boundary changes in this vicinity and believes that the location of this sign is, and always has been, within the Blue Ash municipal boundaries. He believes that if the Township was involved in the past, that perhaps Hamilton County most likely acted improperly on it. *(Again, additional comment from the representatives were made; however, because the microphone/sound system was not utilized and the microphone in place did not pick up their voices, they could not be heard for inclusion in these minutes.)*

Mr. Franke commented that Mr. Clarke is not trying to evade the issue as he did attempt to follow proper channels. He was assisted by the City staff in filling out of the applications and documentation. He reiterated that the only affect this sign modification has is to assist Mr. Clark with his business. The change would not hurt the City of Blue Ash, would not set any precedent, and would not affect any issue of public welfare in Blue Ash. It simply assists Mr. Clarke's business in succeeding. He commented that there would be no good accomplished in denying this request and encouraged Council for the need to protect citizen's interests. Although he understands the City's desire to protect Blue Ash and to enforce the law, if there was some viable, justifiable interest in denying this appeal, then he too would agree with not approving it. However, to deny his client's request based on the application filled out by Mr. Clarke with the assistance of the City staff would not be fair or just.

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In addressing a question of clarification from Mayor Weber, Mr. Pacheco commented that if Council deems this proposed change to not be a change in copy or routine maintenance, then Council has no choice other than to deny, based upon today's Code adopted by Council two years ago.

Mr. Franke noted that it is his opinion that the legislation needs to be altered and further defined to be purposeful. In his opinion, Council has the opportunity to interpret the Code in such a way that would allow his client to make the requested changes to the sign – without hurting anyone. He reiterated that the proposed change only helps Mr. Clarke's business and hurts no one or affects in a negative way the overall public welfare.

Mr. Pacheco noted that this request changes the sign from a static display to a digital display, representing a completely different sign. He noted that there is multiple case law within the Ohio Supreme Court recognizing that there is harm caused by billboards due to their aesthetic effects.

In addressing a question from Councilman Adamec, it was clarified that Mr. Clarke would be allowed to keep the same static sign that is in place today

Councilman Sumner noted that the situation at hand is a difficult one. However, there is no question that the sign is located within Blue Ash and that it is considered a nonconforming legal use. He noted that the Deputy Solicitor has explained that Council does not have discretion in this case unless the proposed changes fit the criteria of it being "routine maintenance or change in copy." As a Planning Commission member, he believes a basic planning principle associated with nonconforming uses is to allow a use to continue for a time after a Code change; however, the continuation of that use should not be considered a "forever" condition. In his opinion, the proposed change would represent an extension of the life and is counter to the principle of the true intent of nonconforming.

Councilman Bryan agreed that the question before Council tonight is do the proposed changes represent a matter of routine maintenance or a copy change. If the answer is "no," then Council should uphold the provisions of the current Blue Ash Code.

After brief discussion, Councilman Sumner moved, Councilman Adamec seconded to uphold the decision of the Board of Zoning Appeals denying this permit and to direct legal staff to complete the appropriate Findings of Fact / Conclusions of Law document to memorialize Council's decision regarding this matter. The Clerk was asked to call the roll. Councilmembers Buckman, Czerwonka, Adamec, Bryan, Stoller, Sumner, Mayor Weber voted yes. Seven yeases. Motion carried.

### **MISCELLANEOUS BUSINESS**

In commenting regarding recent requests to the City to consider installation of speed bumps in neighborhoods, City Manager David Waltz noted that safety, traffic, and speeding have always been a concern for the City and added that substantial time and effort is expended regularly related to these issues. He explained that throughout the years, the City has had speed bump requests from residents; however, they have generally not been installed for a variety of reasons, such as the problem such devices create with emergency access (response time is greatly reduced), maintenance issues (especially with snow plows, etc.), and additional noise created in the area. The Administration has talked with other area communities who have placed such devices, and has confirmed with them that these concerns are valid. The Administration has historically been hesitant in recommending the installation of speed bumps in most situations. He explained that a traffic analysis was recently completed in the Arcadia area, and that study did show a percentage of speeders. However, the Police Department reports overall the percentage of speeders was not excessively high when compared to generally accepted standards (speeding in the 15% range is considered "normal"). He noted that the local road construction currently underway by the Greater Cincinnati Water Works (GCWW) is also likely contributing to the additional traffic and speeders. It is the Administration's suggestion that at this point, speed bumps not be installed; however, the Police Department should have a greater presence in the neighborhood. He noted that if at the end of the GCWW construction period and targeted

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enforcement period that speeding levels are excessively high, then alternative, less invasive solutions (as compared to speed humps) could be considered, such as installation of speed cameras, initiation of citizen patrol activities, etc. If Council deems it appropriate to consider in the future alternative means, then he suggested that the City develop a model similar to what the City of Dublin did in addressing "traffic calming" situations. Part of that process would include solicitation of citizen input to assure that the whole community, not just selected areas, are agreeable to the overall concepts proposed.

In addressing a question from Councilman Sumner, Mr. Waltz commented that in general, communities don't consider a physical solution such as speed bumps unless speeding is apparent in at least 15% of the traffic levels. It is the opinion of experts that, for example, 15% of traffic traveling over 30 MPH in a 25 MPH zone would be considered acceptable and common. Mr. Duncan added that a similar study completed not too long ago in Carpenter's Run showed that between 10% and 14% were speeding (therefore, also not reaching a threshold where speed bumps would be recommended). Mr. Waltz commented that he has talked with the City's Traffic Safety Officer Mark Ziegler about the concerns from the Arcadia neighborhood, and Officer Ziegler agrees that what is being experienced there is very similar to what would be seen in other comparable neighborhoods throughout Blue Ash and the Greater Cincinnati area.

Some discussion was had amongst Council regarding the recommendations for Arcadia. Councilman Adamec commented that perhaps more effort could be placed towards minimizing the extremely excessive speeders. Councilwoman Stoller commented that she likes the idea of installing cameras. Mr. Waltz cautioned that if a future decision is made to utilize cameras to not be surprised if additional public discussion arises relating to civil rights (as has happened in other communities installing cameras). He added that if a future recommendation is to install cameras, most communities utilize an outside service to coordinate this activity. Councilman Sumner suggested also that the Police Department's speed wagon be utilized as well, in addition to the stepped up enforcement efforts. Councilman Bryan agrees that more rigorous enforcement may be the key, including less flexibility in terms of issuing tickets (perhaps even zero tolerance). He added that the area being vigorously enforced will earn the reputation of being a "speed trap" and that motorists will simply choose to travel other routes. Mr. Waltz cautioned all that increased enforcement efforts do not necessarily mean a Police presence 24 hours a day; it does mean that Police presence will be increased from time-to-time. Councilman Sumner suggested that perhaps at least twice or three times the normal coverage should be in place as a starting point for the remainder of the summer, and especially more heavy during times when pedestrians are more prevalent.

Councilman Sumner noted that at the July Planning Commission meeting, the McKeown Bloomin Garden Center was on the agenda with another attempt to use the property adjacent to the business as something other than residential. Their desire is for the adjacent residentially-zoned property to have a small parking lot along with a landscaping display. He noted that three Commission members were present, and that the issue was tabled with instructions to the Administration to see if an idea could be generated to assist the McKeowns; however, to do so in a manner which would not set a city-wide precedent. He added that it is his opinion that if the Commission had acted that evening (in lieu of tabling the issue), members were leaning towards denial of the request.

In reference to an item previously distributed to Council members regarding a potential opportunity to provide economic development assistance to maintain an existing business, Mr. Waltz noted that an ordinance may be presented at a near future meeting requesting formal Council approval, once more information is confirmed and known.

In addressing a recommendation from the Administration regarding the cancelling of Student Government Day, Councilman Sumner noted that the ideas was acceptable to him, especially given the offer for additional effort extended by the City Manager to visit student government classes at the high school. Councilman Sumner suggested that the Mayor or representative from Council assist the City Manager with that effort.

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Councilman Buckman acknowledged the difficulties associated with attaining student participation in the student government day activities in recent years since most students have jobs, in addition to their already busy school and activities schedules. Councilman Buckman also congratulated the City and staff on a successful July 4 event and spectacular fireworks display. He has received many positive comments about this year's event, despite the challenge of the new venue. Councilman Buckman also wished Public Works Director Mike Duncan a happy birthday.

Councilman Adamec offered his congratulations as well on a successful July 4 event. In addressing a question from Councilman Adamec, Mr. Waltz explained that the event location may have appeared smaller to those in attendance; however, that venue is nearly twice as large as the event's previous location – the Sports Center. He explained that because so many more people attended (likely over 100,000), the illusion was that the site was smaller.

Councilman Sumner added his compliments for a job well done at that event. Parks & Recreation Director Chuck Funk added that the event truly is a city-wide event, involving all departments and divisions – especially this year given the additional planning and effort associated with relocating the event to a completely new location.

Vice Mayor Czerwonka added his congratulations on a successful event and acknowledged that it is a team effort.

Mayor Weber offered his congratulations on a successful event as well. He added that the City should be very pleased that such a huge event at a new location went so well.

**ADJOURNMENT**

All items on the agenda having been acted upon, Councilman Adamec moved, Councilwoman Stoller seconded to adjourn the meeting. A voice vote was taken. All members voted yes. The Council meeting was adjourned at approximately 9:06 PM.

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Mark F. Weber, Mayor

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Jamie K. Eifert, Clerk of Council

MINUTES WRITTEN BY *(via audio recording)*:

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Susan K. Bennett, Deputy Clerk of Council  
*(entered the meeting at approximately 8:30PM)*