

Cuyahoga Falls City Council  
Minutes of the Council Meeting  
February 24, 2003

CALL TO ORDER Mrs. Hummel at 6:30 p.m.

ROLL CALL Mr. Schmidt, present; Mr. Gorbach, present; Mr. Flinn, present; Mr. Barnhart, present; Mr. Potts, present; Mr. James, present; Mr. Walters, present, Mrs. Pyke, present, Mrs. Klinger, present; Mr. Bauer, present; Mrs. Hummel, present.

INVOCATION Mr. Schmidt

PLEDGE Mrs. Pyke

APPROVAL OF MINUTES

The minutes of the February 10, 2003 regular Council meeting were approved as amended.

REPORTS AND COMMUNICATIONS

1. A Notice from the Ohio Division of Liquor Control regarding a liquor license transfer from Zirconia Management Inc. dba Christophers, 657 Portage Trail, Unit 12, Cuyahoga Falls, Ohio **to** Retzer Euro Café Inc. dba Retzs Laconis II, 647 Sackett, Cuyahoga Falls, Ohio.
2. A Notice from the Ohio Division of Liquor Control regarding a new liquor license to Tamarkin Co. dba Giant Eagle Fuel Station, 125 Graham Road, Cuyahoga Falls, Ohio.
3. A carbon copy of a letter dated February 10, 2003 from the Summit County Clerk of Council to the Summit County Engineer enclosing a revised annexation plat and legal description regarding the annexation of 96.2960 acres of Boston Twp. to the City of Cuyahoga Falls.

NEW LEGISLATION

Temp. Ord. No. B-31 (Finance Committee)

AN ORDINANCE AUTHORIZING THE PARK & RECREATION BOARD TO ENTER INTO A CONTRACT OR CONTRACTS, ACCORDING TO LAW, FOR THE PURCHASE OF CONCESSION ITEMS, AND DECLARING AN EMERGENCY.

Temp. Ord. No. B-32 (Finance Committee)

AN ORDINANCE AUTHORIZING THE PARK AND RECREATION BOARD TO ENTER INTO A CONTRACT OR CONTRACTS, ACCORDING TO LAW, FOR THE PURCHASE OF CHEMICALS FOR WATER WORKS FAMILY AQUATIC CENTER, AND DECLARING AN EMERGENCY.

Temp. Ord. No. B-33 (Finance Committee)

AN ORDINANCE AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENT TO SUMMIT COUNTY UMPIRES ASSOCIATION FOR UMPIRING SERVICES FOR THE PARKS AND RECREATION DEPARTMENT, AND DECLARING AN EMERGENCY.

Temp. Ord. No. B-34 (Finance Committee)

AN ORDINANCE AUTHORIZING THE MAYOR, AS DIRECTOR OF PUBLIC SAFETY, TO ENTER INTO A CONTRACT WITH MEDTRONIC PHYSIO CONTROL FOR THE PURCHASE OF 2 LIFEPAK 12 DEFIBRILLATORS, AND DECLARING AN EMERGENCY.

Temp. Ord. No. B-35 (Public Improvements Committee)

AN ORDINANCE AUTHORIZING AND DIRECTING THE EXECUTION OF A WIND ENERGY PURCHASE SCHEDULE TO AN AGREEMENT WITH AMERICAN MUNICIPAL POWER-OHIO, INC., AND DECLARING AN EMERGENCY.

Temp. Ord. No. B-36 (Public Improvements Committee)

AN ORDINANCE AUTHORIZING THE EXECUTION OF A BASE LOAD DEVELOPMENTAL COST SHARING AGREEMENT BY THE CITY OF CUYAHOGA FALLS, OHIO WITH AMERICAN MUNICIPAL POWER-OHIO, INC., AND DECLARING AN EMERGENCY.

Temp. Res. No. B-37 (Public Affairs Committee)

A RESOLUTION URGING THE JOINT COMMITTEE ON AGENCY RULE REVIEW TO REJECT PROPOSED AMENDMENTS TO CHAPTER 3745-27 OF THE OHIO ADMINISTRATIVE CODE, AND DECLARING AN EMERGENCY.

SPECIAL COMMITTEES

None.

PUBLIC HEARINGS

None.

STANDING COMMITTEES

PLANNING & ZONING

Temp. Ord. No. A-182

Council Clerk read A-182 (third reading). Mr. Schmidt moved to adopt A-182, second by Mrs. Klinger. Motion passed. Voice Vote (11-0).

FINANCE

Temp. Ord. No. B-22

Council Clerk read B-22 (third reading). Mr. Gorbach moved to adopt B-22, second by Mr. Schmidt. Motion passed. Voice Vote (11-0).

Temp. Ord. No. B-23

Council Clerk read B-23 (third reading). Mr. Gorbach moved to adopt B-23, second by Mr. Barnhart. Mr. Gorbach stated that Council received the new Exhibit A in its packet and, since he has not heard there were any further changes, he is assuming that exhibit will be accepted. Motion passed. Voice Vote (11-0).

Temp. Ord. No. B-24

Council Clerk read B-24 (third reading). Mr. Gorbach moved to adopt B-24, second by Mr. Schmidt. Motion passed. Voice Vote (11-0).

Temp. Ord. Substitute. No. B-25

Council Clerk read B-25 (third reading). Mr. Gorbach moved to excuse Mrs. Hummel and Mr. Flinn from voting on this legislation, second by Mr. Barnhart. Motion passed. Voice Vote (11-0). Mr. Gorbach moved to amend B-25 by adding at the end of line 27 the words "in an amount not to exceed \$3,517,240 as detailed on the budget information sheet", second by Mr. Barnhart. Mrs. Hummel stated she is voting on the amendment; Mr. Flinn declined to vote on the amendment. Motion passed. Voice Vote (10-0). Mr. Gorbach moved to adopt amended B-25, second by Mr. Barnhart. Motion passed. Voice Vote (9-0).

#### PUBLIC IMPROVEMENTS

Temp. Res. Substitute No. B-16

Council Clerk read B-16 (third reading). Mr. Walters moved to adopt B-16, second by Mr. Bauer. Mr. Walters stated the reason for the substitution was due to some typos but the language stays the same. Motion passed. Voice Vote (11-0).

Temp. Res. No. B-17

Council Clerk read B-17 (third reading). Mr. Walters moved to adopt B-17, second by Mrs. Pyke. Motion passed. Voice Vote (11-0).

Temp. Ord. Substitute No. B-26

Council Clerk read B-26 (third reading). Mr. Walters moved to amend B-26 by adding at the end of line 60 the words "in an amount not to exceed \$1,020,000", second by Mrs. Pyke. Motion passed. Voice Vote (11-0). Mr. Walters moved to adopt amended B-26, second by Mr. Bauer. Mr. Walters pointed out the reason for the substitution was due to an additional breakdown of funds with subsequent amounts as shown on the budget information sheet. Motion passed. Voice Vote (11-0).

Temp. Ord. Substitute No. B-27

Council Clerk read B-27 (third reading). Mr. Walters moved to amend B-27 by adding at the end of line 59 the words "in an amount not to exceed \$674,000", second by Mrs. Pyke. Motion passed. Voice Vote (11-0). Mr. Walters moved to adopt amended B-27, second by Mrs. Pyke. Mr. Walters pointed out the reason for the substitution was due to an additional breakdown of funds with subsequent amounts as shown on the budget information sheet. Motion passed. Voice Vote (11-0).



Temp. Ord. No. B-28

Council Clerk read B-28 (third reading). Mr. Walters moved to adopt B-28, second by Mr. Bauer. Motion passed. Voice Vote (11-0).

PUBLIC AFFAIRS

Temp. Ord. No. B-29

Council Clerk read B-29 (third reading). Mr. James moved to adopt B-29, second by Mrs. Klinger. Motion passed. Voice Vote (11-0).

Temp. Ord. No. B-30

Council Clerk read B-30 (third reading). Mr. James moved to adopt B-30, second by Mr. Flinn. Motion passed. Voice Vote (11-0).

COMMUNITY DEVELOPMENT

Nothing to report.

SCHEDULE OF MEETINGS

Planning & Zoning Committee:	Subject to call.
Finance Committee:	Monday, March 3, 2003 6:15 p.m.
Public Improvements Committee:	6:20 p.m.
Public Affairs Committee:	6:25 p.m.
Community Development Committee:	Subject to call.

MISCELLANEOUS BUSINESS

Mr. Gorbach asked Mrs. Carr about the storm water management sheet. Specifically, he noted that four items were in regard to the alley and wanted to know if those were being fixed. It appeared they were reference numbers 103, 163, 142 and 56. Mr. Bell stated that 103 is a project that is already done. Mrs. Carr stated they just wanted to show Council everything they have done since it began. The date listed is the date it was completed. Mr. Gorbach pointed out that #163 is designated as "future." Mrs. Carr said she will check on that.

Mrs. Truby stated that Council should have received a copy of the Ward 2 Newsletter, which is being dropped to each Ward 2 resident. She stated at 10:00 a.m. on March 8, there is a Charrette meeting scheduled. The keynote speaker for that meeting is David Sucher from Seattle, Washington. She urged all Council members to attend that meeting. Mr. Schmidt asked if this will be done in all wards this year. Mrs. Truby stated mostly likely it would not. She indicated these take a lot of time so not all of the wards would get in this year. Mr. Schmidt asked if the printing of the newsletter was paid for with taxpayer money. Mrs. Truby indicated it was. Mr. Schmidt stated he felt it was inappropriate to use taxpayer money for something that contained a letter from a council person in an election year. He thought it may even be illegal. He felt it was a promotional piece with a message from a council person in an election year. It was his opinion that the newsletter could have gone out without the council person's name. Mrs. Truby stated that Fred Guerra designed the newsletter using templates that other communities use. She stated she would have Mr. Arrington look into it. Mayor Robart stated it was not illegal. Mr. Schmidt felt it was not necessary to use Mrs. Pyke's name. Mrs. Truby disagreed and stated they will be doing the same

thing in the other wards. Mr. Schmidt stated it was unfair to do this in an election year and if it was not illegal it certainly seems unethical. Mrs. Pyke pointed out the newsletter also mentions Mrs. Hummel and Mrs. Klinger. She indicated if it is found to be illegal, she will reimburse the City. She stated she is making a significant donation to the kids who are passing the newsletters out. The point of her letter was to appeal to the residents in her ward to attend the meeting. She believes this is in the best interest of Ward 2. Mr. Schmidt stated if it were him, he would have turned it down. Mrs. Pyke reiterated if Mr. Arrington found it illegal, she would pay for it. Mrs. Hummel asked for Mr. Arrington's opinion. Mr. Arrington stated he did not want to speak out of turn but feels the newsletter does not promote a candidate. He will look into it.

Mrs. Hummel indicated to Mrs. Carr that there is a substantial amount of standing water on Wyoga Lake Road near the baseball complex, where the water in the ditch is level with the road. There are also signs indicating high water. Mr. Bell stated that is a very low area and the road is at such an elevation that the water backs up. Mrs. Hummel asked if there was anything the City could do in terms of storm water. She stated if a car went off the road there, it would be a big problem. Mr. Bell stated they have closed the road in the past due to the amount of standing water. He indicated that side drains across to the other side and into the pond. It is extremely flat and there is no fall through. There is no immediate resolution. Mr. Potts stated that cleaning the ditch at the golf course has helped in the past. Mrs. Carr stated they will look into that. She also informed Council to be prepared because it appeared it was going to be a bad year for the water issue.

Mrs. Hummel stated that the police chief test is scheduled for April 4. She asked if the lieutenant test expired in June. Mr. Arrington stated it did. She asked if the City would be doing a captain's test. Mr. Arrington stated they do not have a vacancy in captain. Mrs. Hummel asked if, by law, the City could test for captain even though there is not a vacancy. Mr. Arrington indicated if neither of the captains pass the chief's test, there would still not be an opening. In that scenario, they would need to redo the chief's test opening it up to the lieutenants.

Mrs. Hummel indicated that there are five Mondays in March. The week of the 24<sup>th</sup> is the week of spring break for any members with children and wondered if anyone had a preference for Council to be off on the 24<sup>th</sup> or the 31<sup>st</sup>. Mr. Flinn indicated he had made vacation plans for the week of the 31<sup>st</sup> in anticipation that Council would be off that day. It was decided that Council will meet on the 24<sup>th</sup> and not on the 31<sup>st</sup>.

Mr. Schmidt moved to adjourn, second by Mr. James. Motion passed. Voice vote (11-0). Meeting adjourned at 7:45 p.m.

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Kathy Hummel, Council President

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Cathleen J. Beebe, Council Clerk

**City of Cuyahoga Falls**  
*Department of Law*  
**Legal Opinion 1-2003**

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To: Mayor Don L. Robart  
cc: Kathy Hummel, President of Council  
All members of Council  
Cathleen Beebe, Clerk of Council  
Susan L. Truby, Director of Community Development  
Joseph Brodzinski, Director of Finance  
Valerie Wax Carr, Director of Public Service  
From: Virgil Arrington Jr., Director of Law  
Date: February 26, 2003  
Re: Use of City Funds to Publish Newsletters

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I have been asked for a legal opinion on the legality of using City funds to publish ward newsletters that are designed to promote participation in public meetings concerning City business.

The City recently undertook the task of revising its zoning code. This is a massive undertaking and will necessarily involve the citizenry. To facilitate citizen involvement, the City is scheduling a series of ward "charettes," or intense working sessions, open to the public. In order to publicize the meetings, the City has prepared and published a ward newsletter to be delivered to each home in the ward in which the meeting will be held. The newsletter promotes the City's zoning project and specifically encourages each resident to attend the public work sessions. The newsletter includes letters from both Mayor Don Robart and the sitting ward council member, the purpose of which is to strongly encourage residents to attend the public work sessions and provide input in the recodification of the City's zoning code.

Ohio Revised Code, Section 9.03 states in part:

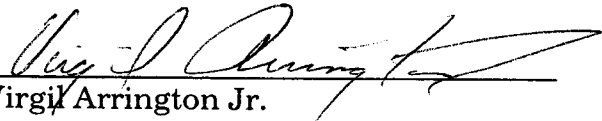
(B) Except as otherwise provided in division (C) of this section, the governing body of a political subdivision may use public funds to publish and distribute newsletters, or to use any other means, to communicate information about the plans, policies, and operations of the political subdivision to members of the public within the political subdivision and to other persons who may be affected by the political subdivision.

Under this provision, the use of City funds to publish newsletters communicating the plans, policies and operations of the City is not illegal. Certainly, the newsletter at issue here falls within this class.

The City may not, however, use public funds to publish information that “[s]upports or opposes the nomination or election of a candidate for public office...” R.C. 9.03(C)(1)(e). The question then is whether the inclusion in the newsletter of a letter from a sitting council member “supports the nomination or election of a candidate for public office.” I conclude that it does not.

Nothing in the council member’s letter or the newsletter in general promotes the nomination or election of anyone. Indeed, there is no indication in the newsletter that the sitting council member will indeed be a candidate for reelection or for any other office. I recognize that incumbency carries a distinct advantage in politics. However, a public official does not cease to be a public official by also being a candidate for office; she need not abandon the duties and functions of her office in order to run for reelection to it. It is perfectly valid for a City to utilize the persuasive influence of its elected officials to encourage public participation in a public project. It is further lawful and valid to place such encouragement in a City-funded newsletter.

For the foregoing reasons, it is my opinion and you are advised, that the expenditure of public funds for the publishing of a ward newsletter informing and promoting the City’s recodification of its zoning code, along with a letter from the sitting ward council member promoting attendance at public meetings to discuss the zoning project, is neither unlawful nor unethical.

  
Virgil Arrington Jr.