

**ITEMS TO BE CONSIDERED  
AT THE CAUCUS PRIOR TO THE COUNCIL MEETING  
TO BE HELD ON TUESDAY, DECEMBER 15, 2020**

The meeting was called to order by Council President Vecchio at 7:00 p.m., the clerk called the roll and the following Members of Council answered:

**SCOTT, SCHMUCK, ORCUTT, TROYER, MENCINI, POINDEXTER, SALVATORE**

Also in attendance were Mayor Gammella, Law Director Horvath, Finance Director Cingle and Engineer Piatak.

**DISCUSSION:**

1. DEPARTMENT OF LIQUOR CONTROL - Brookpark Food & Spirits, LLC, 13311 Brookpark Road, Brook Park, OH 44142. **C TRFO 0970516 FOR A D1, D2, D3 AND D3A**

Mrs. Horvath stated from a paper standpoint there are no issues with this but did not have an opportunity to do usual due diligence and not able to contact parties involved or attorneys. Council can authorize this or ask for an extension.

Mr. Mencini asked Mrs. Horvath how long has the city been dealing with this request?

Mrs. Horvath responded the date-stamp shows December 9, 2020 with today being December 15<sup>th</sup>, six days two of which are weekend days. Part of the problem is there is not a lot of information sent with this. Then trying to contact the new people and sometimes the phone numbers aren't always forthcoming, too short of a time period for the law department to do what is usually done.

Mr. Poindexter asked Mrs. Horvath if the first meeting in January, 2021 provides enough time to do due diligence.

Mrs. Horvath concurred.

**Motion** by Mr. Poindexter, supported by Mr. Mencini, to move to the January 5, 2021 Caucus Prior to agenda.

Mr. Troyer clarified that an extension will be requested.

Mrs. Horvath concurred.

**ROLL CALL: AYES:** Poindexter, Mencini, Salvatore, Troyer, Orcutt, Schmuck, Scott  
**NAYS:** None. The motion carried.

**Discussion: cont.**

Mr. Poindexter asked for discussion of the events that happened at the December 1, 2020 meetings. Council received a few emails regarding that issue as well as phone calls. Wondering if Council President Vecchio could provide a brief synopsis of the events of December 1<sup>st</sup> in relation to the meetings. Also ask the law director to clarify if Council is within Charter obligations.

**Motion** by Mr. Poindexter, supported by Mrs. Schmuck, to go out of the regular order of business to discuss the events of December 1, 2020.

**ROLL CALL: AYES:** Poindexter, Schmuck, Scott, Orcutt, Troyer, Mencini, Salvatore  
**NAYS:** None. The motion carried.

Mrs. Horvath stated by way of Councilman Poindexter's request for discussion, obviously, we all know the events that occurred on December 1<sup>st</sup> being present at the meeting. I will assume what is being asked of me are the legal underpinnings of what transpired and what actions were taken. I will say this obviously there was an emergency by losing power and unable to operate BoxCast (livestreaming) and would say that COVID-19 is also an emergency but the emergency (December 1<sup>st</sup>) with losing power is a little different. Obviously, it's immediate and no one can move forward but would still take a look at attorney general's (AG) opinion dated March 13, 2020; which is part of what was used for the emergency legislation. The AG's opinion noted the Open Meetings Act requires obviously public bodies deliberate in the open with the public being able to view the meetings. The AG also in part of his opinion stated that, of course, if a member of the public body chooses to appear via teleconference and/or telephone it is imperative that all other requirements of the Open Meetings Act be fulfilled. A quorum must still be present whether in person, phone or some combination thereof. In the event that a member appearing telephonically is cutoff the public body should cease all discussions and/or deliberations until the member can be reconnected. Obviously, the AG's thought is a quorum is needed and also need to insure that if something happens during a teleconference or telephone meeting that someone who dropped off is able to reconnect and join discussions, otherwise, the deliberations shall cease. The AG further opines that if a public body gives the public access to a meeting electronically and the members of the body appear telephonically the body has to assure that the public is able to hear the discussions and deliberations of all of the members, even those present telephonically. The AG goes on to speak of the Ohio Revised Code (ORC) section 5502.24b although older section passed in 1995 deals with more of an immediate type of emergency. Basically, if there is a governing body subdivision of the state the municipality has some sort of emergency that means the location needs to be moved or the site that is allowed. Interestingly enough if I may quote from that particular section of the ORC it says "Therefore the governing bodies may meet at those previously designated sights or

**Discussion: cont.**

places and at any other convenient site or place on the call of the presiding officer; or any two members of the governing bodies". During the period when the public business is conducted an emergency temporary location the governing body and other officers of the political subdivision have, possess and exercise at the location or locations all the executive, legislative and judicial powers and functions. Conferred upon by that body and by officers by and under the laws of the State of Ohio and more importantly that section states 'such powers and functions may be exercised in light of the exigencies of the emergency with regard to or compliance with time consuming procedures and formalities prescribed by law pertaining thereto. Basically, what the ORC is saying is if there is an emergency common sense dictates that you need to perhaps change your procedures not be bound by the ordinary time-consuming things which you ordinarily would and you're able to have the ability to change things up. Looking at this section of the ORC, the AG's position back in March, 2020 and knowing what happened because I did attend part of that meeting I would say that what occurred as far as the decision to move the meeting to a different time and location was probably the only option that Council had. I would also say that it's perfectly allowable under the ORC and don't see any problem with the Charter it's in complete accordance with the Ohio Meetings Act because nothing occurred of official business that the public was prevented from hearing. Furthermore, my personal opinion I would say it was good leadership on the part of Council and showed that your flexible enough to recognize that this was an emergency and can no longer function within the meeting format and did the common sense thing to move this meeting to the next available time. If the question whether or not the procedures taken on December 1<sup>st</sup> are appropriate and proper my opinion would be yes, they certainly and in fact probably were the only option Council had. Sorry for a long explanation but it's important that we look at the ORC and some other items as we analyze what was done was proper.

Mr. Poindexter continued don't think the question is that it was done the only way we could do. One of the questions raised is on the two regular scheduled (Council) meetings per month being it was regularly scheduled for December 1<sup>st</sup> then moved to December 8<sup>th</sup> and, obviously, today is Council's regular scheduled meeting of the month. I would like to have your opinion on if you consider December 8<sup>th</sup> a regular scheduled meeting because it was a regular scheduled meeting that was moved or should Council amend the schedule and hold another regular scheduled meeting for this month.

Mrs. Horvath stated don't have the Council rules in front of me but think it's either Council rule number three or four that says four members of Council can cancel or move a meeting. I would say that what was done certainly is appropriate Council moved to a day and time where Council has a regular scheduled meeting and really

**Discussion: cont.**

don't see the need for rescheduling anything; I think what Council did was appropriate and conducted your meeting in a different location and different time because of lack of power. Council certainly is able to schedule meetings when they wish and think there was an agenda that came forward in a timely fashion and think the public was aware this meeting was going forward on December 8<sup>th</sup>, a week later. I really don't see any problems with the situation.

Mr. Mencini stated to Mrs. Horvath good summation on what transpired. My question is when everything changed back in March and would say some of the rules Council has at the Council Chambers don't necessarily apply to having a meeting at home. When Council moves a meeting some of the questions were asked was there a motion and second, things of that sort. On the emergency you spoke of how many things fall under emergency because it's so different when having a Zoom meeting, this is all new to Councils', school boards and so forth. With COVID-19 is Council still supposed to follow the City Charter to a 'tee'. Think that's some of the basis of the question by Mr. Poindexter is referring to. How much leeway does Council have does everything have to be voted on to change everything?

Mrs. Horvath responded first off would remind you that ORC 5502.24 states that at the call of the presiding officer the meeting location can be changed. Obviously, anticipates more of a physical emergency than what COVID-19 is. I don't see that any portions of the Charter were violated and think Council can schedule its' own meetings and think by acclamation everyone that agreed that it was impossible to continue on the December 1<sup>st</sup> with the meeting and therefore the time was changed to December 8<sup>th</sup>. I don't see any violations of the Charter, don't see any problems Council can certainly schedule your own meetings, you control your own agenda and you control how you operate and think it was better to cancel and move the meeting than it would be to proceed and discuss official business without the public being able to hear. Again, think what was done is in conforming of the Charter and ORC and would say good judgement on all of Council's part to recognize it being impossible to go forward and have a meeting. DriveOhio portion of the meeting was fine but Council recognized it better to continue than go forward with regard to the official business that was on the agenda, the appropriations ordinance and rightly moved obviously would have to say unanimous in the sense that there isn't anything else anyone could do. Think was good choice and don't see any problems with it and don't see any particular section of the Charter that I would deem to be violated.

**Motion** by Mr. Poindexter, supported by Mr. Mencini, that the events of the December 1, 2020 meeting was discussed.

**ROLL CALL: AYES:** Poindexter, Mencini, Salvatore, Troyer, Orcutt, Schmuck, Scott  
**NAYS:** None. The motion carried.

**FINANCE COMMITTEE - CHAIRMAN, SCOTT:**

1. A RESOLUTION REQUESTING THE CUYAHOGA COUNTY FISCAL OFFICER TO ADVANCE TAX REVENUES FROM THE PROCEEDS OF TAX LEVIES PURSUANT TO SECTION 321.34 OF THE OHIO REVISED CODE AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella.

Mr. Scott stated this is time-sensitive and must be done by December 31, 2020.

Mayor Gammella stated this is the city's property taxes and should be placed on the Council agenda immediately following.

**Motion** by Mr. Salvatore, supported by Mr. Poindexter, to move to the Council agenda immediately following.

**ROLL CALL: AYES:** Salvatore, Poindexter, Mencini, Troyer, Orcutt, Schmuck, Scott  
**NAYS:** None. The motion carried.

Mr. Vecchio stated this will appear under M-2 as Resolution No. 23-2020.

**LEGISLATIVE COMMITTEE - CHAIRMAN, MENCINI:**

1. ORDINANCE NO. 11143-2020, AMENDING ORDINANCE NO. 11080-2019 AUTHORIZING THE IMPLEMENTATION OF THE BROOK PARK HOME MAINTENANCE ASSISTANCE GRANT PROGRAM (HMAP) AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella and Council as a Whole.

Mayor Gammella stated the HMAP Program is very important and should be moved forward.

Mr. Salvatore stated as an original sponsor this is a great program.

**Motion** by Mr. Salvatore, supported by Mrs. Schmuck, to place on the Council agenda immediately following.

Mr. Troyer stated this is for the year 2020 and don't think this is going to happen that quick and think Council should make this for 2021 and look at it early next year to amend and see what Council is dealing with. This is the 2020 program and obviously too late to do anything.

Mr. Orcutt asked Mayor Gammella if anyone has applied for this program and performed any construction projects at their residence and waiting for reimbursement?

Mr. Salvatore commented if no one has applied than this program should be pushed into 2021; possibly adopt just in case and move the funds to 2021.

**Legislative Committee - Chairman, Mencini: cont.**

Mr. Vecchio stated if moved forward Council can amend under First Reading to the 2021 program, if Council deems necessary.

Mayor Gammella clarified 2020 and 2021, correct?

Mr. Salvatore concurred.

Mr. Vecchio responded either way.

Mr. Cingle stated there is one outstanding from 2019, my understanding it was a renovation of a porch that began in 2019 and didn't get finalized until 2020. The resident has contacted both Economic Development Commissioner Adams and myself inquiring about payment. Think it was for \$2,500.00, if not mistaken, and have asked for additional information from the resident that haven't received to date.

Mr. Orcutt stated to Mr. Cingle that front porch was completed in 2020?

Mr. Cingle concurred and stated my understanding the construction began in 2019 and finalized the construction in 2020. The resident is waiting payment and we have asked the resident for a cancelled check or verification that payment was made that hasn't been received to date. If Council is going to move this forward the amendment is to keep for the years 2019 through 2021.

Mr. Troyer stated to Mr. Cingle no funds were taken out they are still appropriated for this program?

Mr. Cingle responded there are monies in the fund that can be appropriated and can be allocated for the HMAP Program.

The clerk called the roll on the motion by Mr. Salvatore, supported by Mrs. Schmuck, to place on the Council agenda immediately following.

**ROLL CALL: AYES:** Salvatore, Schmuck, Scott, Orcutt, Troyer, Mencini, Poindexter  
**NAYS:** None. The motion carried.

Mr. Vecchio stated this will appear under N-2.

Mr. Troyer commented stand corrected there was something I didn't know.

**Legislative Committee - Chairman, Mencini: cont.**

2. AN ORDINANCE ENACTING SECTION 509.16 OF THE GENERAL OFFENSES CODE OF THE CITY OF BROOK PARK ENTITLED 'PEDESTRIAN OR VEHICLE INTERFERENCE; ATM PRIVACY' AND DECLARING AN EMERGENCY. Introduced by Council President Vecchio.

Mr. Vecchio stated this piece was discussed on October 15<sup>th</sup> and most of Council was in agreement that additional work needed to be done. Asked for additional help for anyone that was interested; nobody came forward. Currently, this is kind of a moot point and would appreciate being read in committee.

**Motion** by Mr. Poindexter, supported by Mr. Scott, to have read in committee.

**ROLL CALL: AYES:** Poindexter, Scott, Schmuck, Orcutt, Troyer, Mencini, Salvatore

**NAYS:** None. The motion carried.

3. AN ORDINANCE AMENDING CERTAIN SECTIONS OF CHAPTER 1361 OF THE BROOK PARK CODIFIED ORDINANCES ENTITLED 'PROPERTY MAINTENANCE CODE' AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella.

Mayor Gammella stated this will put more teeth into this code chapter and had problems with the courts due to not having a penalty listed.

Mr. Scott clarified this doesn't affect the body of the legislation just adds a penalty section?

Mayor Gammella concurred.

Mr. Troyer stated this needs to be put back in committee due to an issue that I will speak to the law department about.

Mrs. Horvath stated think this is important that Council move forward with this, not sure what Mr. Troyer's issue is but currently with the cold weather things are quiet. As the year advances the city will need to have cases go forward to Berea Municipal Court and it's important the penalty section be included for tickets and complaints to be written. If there are any issues they can be cleaned up at another time.

Mayor Gammella concurred.

Mr. Salvatore stated to Mr. Troyer is there anything that you can enlighten Council tonight with your concerns, so Council can hear them and move forward.

**Legislative Committee - Chairman, Mencini:**

Mr. Troyer stated wanted to do this quietly but if I must, the wording to remove Section 1361.99, old section, doesn't remove that it moves it and it removes the old 1361.98. That's no here to be found and that read 'all plumbing fixtures shall be properly connected through either a public sewer system or to an approved private sewage disposal system, so that removes the old section 1361.98. The wording says that old 1361.99 is formally removed so Council needs to put the old 1361.98 left in there and then amend to include penalty.

Mr. Mencini commented one good thing would be to have the building commissioner in attendance to go over this a little bit. A few meetings ago I stated to the Mayor it would be nice to have some of the department heads give explanations on legislation coming forward, not only for Council but also the residents. If there are any questions or clarifications answers can be provided from the main person.

Mr. Salvatore asked if this legislation could be moved to the next Caucus agenda to clean up that one section and then move forward.

Mrs. Horvath stated the intent is to leave the plumbing language into 1361.09 but create a new section 1361.99 that includes the penalty section. That was the intent to have that penalty section there to be used for enforcement purposes. My understanding is the maintenance plumbing language into 1361.98 and create the new penalty language.

Mr. Salvatore clarified to Mrs. Horvath are you saying there is no section 1361.99 currently; this will add the section.

Mrs. Horvath interjected my understanding is the penalty section is being taken out of another section and adding a separate penalty section.

Mr. Salvatore continued reading on page two it reads the former section of 1361.99 is coming out and this would replace it?

Mr. Vecchio stated looking at the legislation off the American Legal codified and 1361.99 Maintenance reads 'every plumbing stack, waste and sewer lines shall function properly and be kept from obstructions, leaks and defects, which is the same as it reads there. So what this is doing is the new 1361.99 replace that section because 1361.98 already reads all plumbing fixtures shall be properly connected to either a public sewer system or to an approved private sewage disposal system. The piece if in front of Council this evening is replacing the current 1361.99.

Mr. Orcutt stated in reference to what Mr. Vecchio was speaking of looking at the



**Legislative Committee - Chairman, Mencini:**

reference page included in the packet that explains exactly what the law director stated. All Council will be doing is changing maintenance from being 1361.99 and adding to 1361.98 and also including 1361.99 as a penalty section. I think this is ready to go and should be placed on the Council agenda following.

Mayor Gammella concurred with Mr. Orcutt's statements.

Mrs. Horvath

Mr. Troyer - Point of Order.

Mr. Mencini recognized.

Mr. Troyer - a Councilperson always come before the law director unless the Councilmember asked for an opinion of the law director on their turn.

Mr. Mencini - your interpretation is very good but it's a Caucus meeting and it's my committee. Madam, law director, go ahead.

Mrs. Horvath stated just wanted to concur with Mr. Orcutt and indicate it would be very much appreciated by the law and building departments if this could move forward.

Mr. Scott stated having discussions with Building Commissioner Hurst and what Mr. Orcutt explained is exactly the explanation I received. Mr. Orcutt gave a clear, concise explanation and agree with Mr. Orcutt let's move forward.

Mr. Troyer stated what the intent of this is to add the penalty and the intent, I believe, was to change 1361.99 to add the penalty, makes sense nothing against. But what used to be 1361.99 was changed to 1361.98 that includes the letter a but still don't have anything with the old 1361.98 which I read general. Because again it's a different heading in general and then maintenance so there is no longer a heading of general. To Mrs. Horvath are you saying that if this piece is passed in this form, what will happen in the final, it will all be under 1361.98 to include general and maintenance and two paragraphs will be included in 1361.98.

Mrs. Horvath responded yes, I would anticipate the plumbing language would remain in that portion and the penalty language is moved to 1361.99, basically creating a new subsection. The plumbing language will remain and use the penalty language in a different section for enforcement purposes.

Mr. Poindexter stated the new 1361.98 will read General with existing language and then there will be a subsection 1361.98 (a) underneath reading Maintenance

**Legislative Committee - Chairman, Mencini: cont.**

and then will go to the new 1361.99 Penalty.

Mrs. Horvath and Mr. Mencini concurred.

**Motion** by Mr. Poindexter, supported by Mrs. Schmuck, to place on the Council agenda immediately following.

Mr. Mencini commented when changes are made of the codified ordinances come in front of Council it's basically for two reasons. Either something is seen that is not being done and has to be corrected or it has to be updated. Sometimes having a director and/or commissioner connected with this would be nice for them to give Council a quick summation helps a little bit.

**ROLL CALL: AYES:** Poindexter, Schmuck, Scott, Orcutt, Troyer, Mencini, Salvatore  
**NAYS:** None. The motion carried.

Mr. Vecchio stated this will appear under M-3 as Ordinance No. 11177-2020.

4. A RESOLUTION HONORING ROSIE'S PLAYHOUSE AND DECLARING AN EMERGENCY. Introduced by Councilman Salvatore, Council as a Whole and Mayor Gammella.

Mr. Salvatore stated I didn't ask this piece to come out and would like to present to the group in the Council Chambers for presentation and show what they've done and some fundraising events that will be very difficult at this time.

Mr. Mencini commented just trying to clear out the committee and was suggested to bring out and concur with your statements; just like the piece in recreation committee honoring a former coach.

Mr. Scott commented this group is in hiatus with no movement going on due to COVID-19.

**Motion** by Mr. Salvatore, supported by Mr. Orcutt, to place back in committee.

**ROLL CALL: AYES:** Salvatore, Orcutt, Schmuck, Scott, Poindexter, Mencini, Troyer  
**NAYS:** None. The motion carried.

**RECREATION COMMITTEE - CHAIRMAN, POINDEXTER:**

1. A RESOLUTION SUPPORTING AND AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE CUYAHOGA DEPARTMENT OF DEVELOPMENT FOR THE 2021 CUYAHOGA COUNTY COMMUNITY DEVELOPMENT SUPPLEMENTAL GRANT PROGRAM TO PROVIDE FINANCIAL ASSISTANCE FOR IMPROVEMENTS TO BROOK PARK CENTRAL PARK AND AUTHORIZING THE MAYOR TO ACCEPT ANY AWARDED GRANT FUNDS AND FILE ALL DOCUMENTS AND EXECUTE ALL AGREEMENTS NECESSARY TO RECEIVE ANY AWARDED GRANT FUNDS AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella.

Mayor Gammella stated Council all we're asking for is permission to move ahead and apply for this grant for an outside fitness area in the amount of \$50,000.00, with no expense to the city.

Mr. Poindexter commented that a phone call was received from Recreation Director Elliott requesting this be moved to the Council agenda following for first reading. The legislation can't be passed tonight due to the public hearing held last week there should be seven days in between with today being the sixth day.

Mr. Troyer stated my question what kind of equipment would the city get for outside?

Mayor Gammella responded as you mentioned the pull-up bars and things of that nature, outside exercise equipment at no cost to the city, strictly by grant monies.

Mr. Troyer asked Mr. Elliott for a brief explanation of outside equipment?

Mr. Elliott stated there would be ten pieces of equipment and it is a number of pieces good for ages 13 to senior citizens and disabled. It's equipment that could be outside and can handle weather elements. In speaking with three different companies in Michigan, Minnesota, Pennsylvania and New York, that deal with harsh winters these would be pieces of equipment that can handle the elements i.e. chest-press, elliptical, step-machine, stretching machine, metric area, balancing equipment for people who may be struggling or rehabilitating.

Mr. Orcutt commented good for the city to go after grant monies.

Mr. Vecchio stated this is time-sensitive and needs to be passed and turned into the county before January 8, 2021.

**Recreation Committee - Chairman, Poindexter: cont.**

**Motion** by Mr. Salvatore, supported by Mr. Orcutt, to place on the Council agenda under letter M - First Reading.

**ROLL CALL: AYES:** Salvatore, Orcutt, Scott, Schmuck, Troyer, Mencini, Poindexter  
**NAYS:** None. The motion carried.

Mr. Vecchio stated this will appear under M-4 as Resolution No. 24-2020.

**SAFETY COMMITTEE - CHAIRMAN, TROYER:**

Mr. Troyer stated the finance director encourages Council to place on the Council agenda following for passage.

1. AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CHANGE ORDER BETWEEN SIGNAL SERVICE AND THE CITY OF BROOK PARK FOR ADDITIONAL MAINTENANCE AND REPAIR WORK TO OUR TRAFFIC SIGNALS INCURRED UNDER ORDINANCE NO. 11062-2019 AND DECLARING AN EMERGENCY. Introduced by Mayor Gammella.

Mr. Cingle concurred with Mr. Troyer’s comments to move to the Council agenda following and adopted.

**Motion** by Mr. Salvatore, supported by Mrs. Schmuck, to place on the Council agenda following.

**ROLL CALL: AYES:** Salvatore, Schmuck, Scott, Orcutt, Troyer, Mencini, Poindexter  
**NAYS:** None. The motion carried.

Mr. Vecchio declared this will appear under M-5 as Ordinance No. 11178-2020.

There being no further business to come before this meeting a **motion** by Mr. Mencini, supported by Mrs. Schmuck, to adjourn.

**ROLL CALL: AYES:** Mencini, Schmuck, Scott, Orcutt, Troyer, Poindexter, Salvatore  
**NAYS:** None. The motion carried.

Council President Vecchio declared this meeting adjourned at 8:02 p.m.

RESPECTFULLY SUBMITTED Michelle Blazak  
Michelle Blazak  
Clerk of Council

APPROVED January 19, 2021

THESE MEETING MINUTES APPROVED BY BROOK PARK CITY COUNCIL ARE A SYNOPSIS, NOT TRANSCRIBED IN THEIR ENTIRETY, ALTHOUGH ACCURATE.

4,389 words