

**MINUTES OF THE REGULAR MEETING OF THE COUNCIL  
OF THE CITY OF AVON, OHIO, HELD MONDAY, NOVEMBER 9, 2020  
IN THE COUNCIL CHAMBERS OF THE MUNICIPAL BUILDING  
AT 7:30 P.M.**

The Chairman, Council President Brian Fischer, called the meeting to order and led the Pledge of Allegiance.

**PRESENT**

Council Members: 1<sup>st</sup> Ward – Bob Butkowski; Council-at-Large – Tammy Holtzmeier; 2<sup>nd</sup> Ward – Dennis McBride; 3<sup>rd</sup> Ward – Anthony Moore; 4<sup>th</sup> Ward - Scott Radcliffe; Council-at-Large – Craig Witherspoon; Council-at-Large – Brian Fischer, Council President; Mayor - Bryan Jensen; Law Director – John Gasior; Finance Director – William Logan; Clerk of Council – Barbara Brooks

**ABSENT** - City Engineer – Ryan Cummins; Service Director – Michael Farmer; Planning and Economic Development Coordinator – Pam Fechter; Safety Director - Duane Streater

Mayor Jensen explained that in order to minimize exposure and the transmission of COVID he excused those on his staff from attending that were not absolutely needed at this meeting. He clarified it was nothing more than a safety precaution.

**CORRESPONDENCE**

The Clerk reported that she received two requests from the Ohio Division of Liquor Control. The first one was a New D5 request to Elysian Metanoia Corp DBA Pinspiration located at 34970 Detroit Road, Ste O, Avon.

The second request was a Stock Transfer to Barbiers Tavern Inc. DBA Frank & Ellies Place located at 37111 Detroit Road, 1<sup>st</sup> Floor & Basement & Deck, Avon for their existing D1, D2, D3 and D6 permit classes.

No comments were made or requests for hearings were voiced.

**ADDITIONS AND DELETIONS TO THE AGENDA**

Mr. Fischer advised that Mr. Gasior requested Resolution No. R-25-20 be added to the agenda.

Mr. Gasior explained that a sample piece of legislation was drafted by another community in Ohio and was listed in the Ohio Municipal League Bulletin last Friday and Resolution No. R-25-20 was modeled after that sample legislation. He advised the legislation points out that on December 1, 2020 the ability to operate a public meeting electronically will expire. Mr. Gasior stated that Senator Fedor has introduced Senate Bill 365 to extend the deadline to at least keep it in sync with the State of Emergency, which runs until December 31, 2020. He said in this way, if the Governor extends the State of Emergency that this would automatically extend with it. Mr. Gasior advised although Avon has not really used the electronic format for public meetings, he felt it was planned for the 2021 Budget Meeting, Finance Committee of Council. He felt it is a good thing to have this legislation in place and he believes a lot of communities in Ohio have done so and it would be a good way to show support for all those other communities acting with public meetings electronically. Mr. Gasior advised he composed the Resolution based on the sample provided in

the Ohio Municipal League bulletin and he appreciates Council's consideration to add it to tonight's agenda.

A motion was made by Mr. McBride and seconded by Mr. Moore to add item #10a, Resolution No. R-25-20 – To Urge Governor DeWine and the Ohio Legislature to Extend the Deadline for Operating Public Meetings Electronically, to the agenda and the vote was: Mr. Butkowski, "yes"; Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Mr. Moore, "yes"; Mr. Radcliffe, "yes"; Mr. Witherspoon, "yes"; Mr. Fischer, "yes".

The vote was 7 for and 0 against and the Chairman declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Butkowski to accept the agenda as amended, and the vote was: Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Mr. Moore, "yes"; Mr. Radcliffe, "yes"; Mr. Witherspoon, "yes"; Mr. Butkowski, "yes"; Mr. Fischer, "yes".

The vote was 7 for and 0 against and the Chairman declared the motion passed.

#### MINUTES OF THE WORK SESSION OF COUNCIL HELD MONDAY, OCTOBER 26, 2020

A motion was made by Mr. McBride and seconded by Mr. Moore to dispense with the reading of the minutes of the Work Session of Council held Monday, October 26, 2020, and to approve said minutes as published, and the vote was: Mr. McBride, "yes"; Mr. Moore, "yes"; Mr. Radcliffe, "yes"; Mr. Witherspoon, "yes"; Mr. Butkowski, "yes"; Mrs. Holtzmeier, "yes"; Mr. Fischer, "yes".

The vote was 7 for and 0 against and the Chairman declared the motion passed.

#### MINUTES OF THE REGULAR MEETING OF COUNCIL HELD MONDAY, OCTOBER 26, 2020

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to dispense with the reading of the minutes of the Regular Meeting of Council held Monday, October 26, 2020, and to approve said minutes as published, and the vote was: Mr. Moore, "yes"; Mr. Radcliffe, "yes"; Mr. Witherspoon, "yes"; Mr. Butkowski, "yes"; Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Mr. Fischer, "yes".

The vote was 7 for and 0 against and the Chairman declared the motion passed.

#### MINUTES OF THE SPECIAL MEETING OF COUNCIL HELD MONDAY, NOVEMBER 2, 2020

A motion was made by Mr. McBride and seconded by Mr. Moore to dispense with the reading of the minutes of the Special Meeting of Council held Monday, November 2, 2020, and to approve said minutes as published, and the vote was: Mr. Radcliffe, "yes"; Mr. Witherspoon, "yes"; Mr. Butkowski, "yes"; Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Mr. Moore, "yes"; Mr. Fischer, "yes".

The vote was 7 for and 0 against and the Chairman declared the motion passed.

#### ORDINANCE NO. 98-20 – REAPPROPRIATIONS

The Clerk read Ordinance No. 98-20 by title only, entitled:

### **AN ORDINANCE TO AMEND AND SUPPLEMENT**

**APPROPRIATIONS ORDINANCE NO. 104-19  
AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Mr. Moore to suspend the rules and act on Ordinance No. 98-20, and the vote was: Mr. Witherspoon, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Radcliffe, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Moore to adopt Ordinance No. 98-20, and the discussion was:

Mr. Logan pointed out that the \$10,000 for the Avon Lions Club food drive was added per the discussion at the Work Session last week.

And the vote was: Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Radcliffe, “yes”; Mr. Witherspoon, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

ORDINANCE NO. 99-20 – AMENDING SECTION 256.04 AND SECTION 256.98 OF THE  
CODIFIED ORDINANCES OF THE CITY TO CREATE THE FULL-TIME AND CLASSIFIED  
POSITION OF PARKS CREW LEADER AND TO ADOPT THE NEW CLASSIFICATION  
SPECIFICATION FOR SAME

The Clerk read Ordinance No. 99-20 by title only, entitled:

**AN ORDINANCE AMENDING SECTION 256.04 AND SECTION 256.98 OF THE  
CODIFIED ORDINANCES OF THE CITY OF AVON TO CREATE THE FULL-  
TIME, CLASSIFIED POSITION OF PARKS CREW LEADER AND TO ADOPT  
THE NEW CLASSIFIED SPECIFICATION FOR SAME  
AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Mr. Moore to suspend the rules and act on Ordinance No. 99-20, and the vote was: Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Radcliffe, “yes”; Mr. Witherspoon, “yes”; Mr. Butkowski, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to adopt Ordinance No. 99-20, and the vote was: Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Radcliffe, “yes”; Mr. Witherspoon, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

RESOLUTION NO. R-24-20 – AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT  
WITH THE LORAIN COUNTY OFFICE ON AGING FOR THE PROVISION OF SERVICES TO  
RESIDENTS OF THE CITY OF AVON

The Clerk read Resolution No. R-24-20 by title only, entitled:

**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF AVON TO ENTER INTO AN AGREEMENT WITH THE LORAIN COUNTY OFFICE ON AGING FOR THE PROVISION OF SERVICES TO RESIDENTS OF THE CITY OF AVON AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Mrs. Holtzmeier to suspend the rules and act on Resolution No. R-24-20, and the vote was: Mr. Moore, “yes”; Mr. Radcliffe, “yes”; Mr. Witherspoon, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

A motion was made by Mr. McBride and seconded by Mrs. Holtzmeier to adopt Resolution No. R-24-20, and the vote was: Mr. Radcliffe, “yes”; Mr. Witherspoon, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

**RESOLUTION NO. R-25-20 – TO URGE GOVERNOR DEWINE AND THE OHIO LEGISLATURE TO EXTEND THE DEADLINE FOR OPERATING PUBLIC MEETINGS ELECTRONICALLY**

The Clerk read Resolution No. R-25-20 by title only, entitled:

**A RESOLUTION TO URGE GOVERNOR DEWINE AND THE OHIO LEGISLATURE TO EXTEND THE DEADLINE FOR OPERATING PUBLIC MEETINGS ELECTRONICALLY AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Mr. Moore to suspend the rules and act on Resolution No. R-25-20, and the vote was: Mr. Witherspoon, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Radcliffe, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Moore to adopt Resolution No. R-25-20, And the vote was: Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Radcliffe, “yes”; Mr. Witherspoon, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

**REPORTS AND COMMENTS**

Mayor Jensen reminded everyone that November 11<sup>th</sup> is Veterans Day and there would be a small service held at 5:00 p.m. at the Veterans Memorial behind the Fire Station and he invited the public to attend.

**COUNCIL MEMBERS:**

Mr. Butkowski, Ward 1, had no comments.

Mrs. Holtzmeier, At Large, advised she was pleased to hear that there is going to be an event on Wednesday to honor the Veterans of Avon. She said that is a good thing and she gave the Administration kudos.

Mr. McBride, Ward 2, had no comments.

Mr. Moore, Ward 3, had no comments.

Mr. Radcliffe, Ward 4, had no comments.

Mr. Witherspoon, At Large, had no comments.

Mr. Fischer, At Large, congratulated the Avon High School Eagles on their win over their rivals against the City to the north. He said they were now on to the final four in football. Go Eagles! Beat Hoban!

**DIRECTORS/ADMINISTRATION:**

Mr. Cummins, City Engineer, was absent.

Mr. Farmer, Service Director, was absent.

Ms. Fechter, Economic Development/Planning Coordinator, was absent.

Mr. Gasior, Law Director, congratulated the Avon Eagles and said every year they keep winning; they are amazing, and it is fun to watch them play High School football.

Mr. Logan, Finance Director, added regarding the Avon High School Eagles that they are the only school that is a public school with no open enrollment in the playoffs. He said the other three teams in the final four are either private Catholic schools or they have open enrollment. Mr. Logan stated that is an amazing testament to that program in Avon.

Mr. Logan advised the City was a party to House Bill 49, a lawsuit regarding constitutionality of the collection of municipal net profits tax by the State. He said a ruling came down from the Ohio Supreme Court last Thursday declaring it to be constitutional. Mr. Logan stated that Avon and one hundred other cities that were a part of that lawsuit lost their case. He said the Supreme Court ruled it to be constitutional despite Home Rule and the other factors. Mr. Logan advised he was not sure where it goes from this point; the attorneys, which are Walter Haverfield representing the R.I.T.A. cities in this case, may file an appeal or a motion for reconsideration. He said Mr. Gasior will be kept in the loop on this topic but he wanted to point it out. Mr. Logan felt it does not mean a lot to the City from a true financial standpoint, but he felt it means a lot more if this one is being pushed through as constitutional that they could try to do the same for the withholding income tax because then Avon would have a problem.

Mr. Gasior advised there is also the legislation moving through to deal with HB197 and where does an employee pay their tax if they are working remotely and that issue will be coming to a head soon here as well. He said he is hearing there might not be a lot of support for those two bills that would overturn HB197 which maintains the status quo, but there is court action pending to challenge HB197. Mr. Gasior stated those are two tax issues that they are following closely and worth mentioning.

Mayor Jensen asked if the findings determined that it was illegal for municipalities to be charged for collecting those taxes.

Mr. Logan advised there is talk about repealing or reversing that .5% charge that is already being collected. He said that may or may not be coming back as a refund to the cities that have paid that .5%. Mr. Logan stated that Avon has paid their share in, although it was not a lot, but over the course of the last few years it was maybe \$300,000 that was collected by the State for net profits tax.

Mayor Jensen asked if that money comes back to Avon then what was the purpose of the State collecting it.

Mr. Logan advised if the State is not going to be able to cover their costs then he did not know.

Mr. Gasior advised when the City dealt with the bed tax issue in court previously they came across case law that said that when there is a tax or fee declared to be illegal the entity can keep it, but must stop collecting it from that point forward. He felt it was not likely that the City would see a refund of that money already collected, but they would not be able to charge it from the point of the case going forward.

Mr. Logan agreed and rhetorically asked if it was cost effective for the State to continue to collect the net profits tax.

Mr. Gasior added that he just wanted to clarify that the City would most likely not see any monies coming back but going forward the City would not be paying it out. He stated as the Mayor commented, would they even bother to continue to do it if they are not going to receive anything for it.

Mr. McBride felt that it would be good to adopt legislation to permit cities to collect the withholding taxes. He said if there is a court case, it could fall in favor of the State which would be bad for a lot of cities and the City of Avon may want to assess their position and decide a course of action. Mr. McBride advised the Mayor and Mr. Logan might have a better idea as to how many businesses in Avon have employees and can those employees work remotely. He mentioned that Bendix could potentially be one of those types of businesses that would be able to do that, and he felt the City needed to be prepared for that happening.

Mr. Logan advised R.I.T.A. has put out some very rough estimates of what those effects might be and Avon's net effect from what R.I.T.A. is saying is basically zero or a very small net plus. He stated on the other hand, a city like Youngstown, is projecting a possible \$9-\$10 million loss in income tax revenue. Mr. Logan said R.I.T.A. did not look at the largest cities like Cleveland, Dayton, Columbus, Cincinnati, Toledo, Akron because those cities all do self-collecting still; but it is going to get interesting. He advised Avon has such a diverse commercial tax base with healthcare facilities and hospitals and there is not a lot of working from home in hospitals. Mr. Logan stated some of the businesses are working from home to some degree. He said in speaking with the Mayor they would like to have some conversations with the top 25-30 commercial taxpayers here in the City such as Shur-Tech, Jenne, Flavorseal, Technofab and informally and openly discuss what they think might be happening. Mr. Logan advised he knows there are some businesses in Avon where a lot of their employees are working from home, but the City's net effect is a bit of a plus because the City has a lot of residents who work in Cleveland or somewhere outside of Avon that are working from home. He said those residents are still having Cleveland income tax withheld, per the law, but if that flips and then becomes a legal challenge the City would then collect that income tax. Mr. Logan stated it was about the overall state of affairs for everything and not so much Avon. He said Avon should be fine, noting that the City has seen building permits this year through the roof, even without Bendix. Mr. Logan advised there is

Hobby Lobby and some of these other expansions going on and the City is going to eclipse 100 new homes this year and he believes Avon will come out of all of this unscathed.

Mr. McBride said that is good to hear. He asked what benefit was there for an employee to work onsite when they have not done so for an extended period of time.

Mr. Logan agreed and said they were going to have such an economic glut in the inner cities.

Mr. Gasior advised he recently read an article about Mayfield Village, which he believes is the home of Progressive Insurance, could lose 25% of the City's income tax because of this situation.

Mr. Streator, Safety Director, was absent.

AUDIENCE: No comments were made from the audience.

ADJOURN: 7:51 p.m.

A motion was made by Mr. McBride and seconded by Mr. Moore to adjourn the Regular Meeting of Council, and the vote was: Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Mr. Moore, "yes"; Mr. Radcliffe, "yes"; Mr. Witherspoon, "yes"; Mr. Butkowski, "yes"; Mr. Fischer, "yes".

The vote was 7 for and 0 against and the Chairman declared the motion passed.