



**COMMITTEE WORK SESSION  
MARCH 21, 2016**

Committee Members Present: Rick Rodgers  
Dennis McGlone  
Joe Kernan  
Dennis Pierson  
Paul Tousley  
Scott Pelot  
Charlotte Whipkey

Also Present: Mayor Mike Zita  
Valerie Wax Carr  
Ron Messner  
Justin Markey  
Karla Richards

The Committee Work Session convened on Monday, March 21, 2016 at 7:00 PM, in the Council Chambers of the Safety Administration Building. The meeting was called to order by Charlotte Whipkey, President of Council. Following a salute to the flag and the Pledge of Allegiance, there was a moment of silent prayer.

**General Topics of Discussion:**

**New Liquor Permit-Loyal Oak Lake Park**

Mr. McGlone stated that the original application has been cancelled effective on March 18, 2016, and a new one was filed and in process, however the State has not sent the new information to the City to address. Mr. McGlone moved to take this off the agenda for tonight, seconded by Mr. Rodgers.

Roll Call: Yes: McGlone, Rodgers, Kernan, Pierson, Tousley, Pelot, Whipkey  
No: None

Motion passed 7-0. Mr. Kernan called appoint of order as the roll call should have been just for the three (3) members of that committee.

**Appointments to BZA & Civil Service Commission**

Mr. Tousley stated these are the appointments to the BZA and Civil Service by the Mayor and turned this over to Mayor Zita. Mayor Zita stated that for the Civil Service Commission its Ms. Peggy Dobbins being reappointed for a second term.

Mayor Zita indicated that Ms. Dobbins will be present at the Council meeting next week. Mr. Art Johnson is being appointed for his first term to the BZA. Mayor Zita stated that their letters of interests were attached. Mr. Tousley stated that Mr. Johnsons experience will be a real asset to the BZA from what he saw. Mr. Tousley moved to place #27-2016, and #28-2016 on Councils next agenda, seconded by Mr. McGlone.

Roll Call:     Yes:   Tousley McGlone Rodgers,  
                  No:    None

Motion passed 3-0.

Mr. Tousley moved to have a Resolution of Appreciation for Mr. West's service on the BZA Board, seconded by Mr. McGlone. Mr. Tousley noted he does intend to waive the readings and pass these next week.

Roll Call:     Yes:   Tousley McGlone Rodgers,  
                  No:    None

Motion passed 3-0.

#### Appoint Assessment Equalization Board Members

Mr. Pelot stated we have been discussing this for several weeks now and we now have seven (7) objections and we have no applicants in Ward 3. Mr. Pierson stated that he received a call today from Ms. Robin Kerns, on Golf Course Drive contacted him today indicating that she wanted to be on that Committee and this was at the last minute, and that he did email that to Mr. Pelot. Mr. Pierson stated that he had talked with Mr. Toulsey about that. Ms. Whipkey asked if she submitted a letter or did she just contact Mr. Pierson? Mr. Pierson stated she had contacted him late today, sort of a last minute. Mr. Pelot stated that she should submit a letter in writing to the Clerk of Council. Mr. Pelot asked if she is part of the project and Mr. Pierson replied no, she is not. Ms. Whipkey noted that Golf Course Drive was removed. Mr. Pelot moved to appoint: Ms. Shelly Leach, Lance Apple as members and Robin Kerns if all of Council and her qualifications were ok with this, with and Mark Spicer as an alternate, seconded by Mr. Tousley.

Roll Call:     Yes:   Pelot, Tousley, Kernan  
                  No:    None

Motion passed 3-0.

#### Oriana House Annual Contract

Mr. Whipkey stated this is something we do every year and is required by the State is boiler plate legislation. Ms. Whipkey stated that this program is related to alcohol abuse and is paid by the offender and last year we paid out about \$1,200.00 maximum. Ms. Whipkey moved to place Ord. #23-2016 on Councils next agenda, waiving readings, seconded by Mr. Pelot.

Roll Call: Yes: Whipkey, Pelot, Pierson  
No: None

Motion passed 3-0.

#### Sewer Benefit Refund

Mr. Pelot stated that this individual had purchased three (3) sewer benefits because they own three (3) lots, one (1) lot is unbuildable due to flooding issues and has asked for a refund for the one (1) parcel. Mr. Markey stated in review of the legislation in the past this was an unused benefit out of the three (3) benefits purchased. Ms. Whipkey asked how this would affect anyone with the future package plants being abandoned, and Mr. Markey stated that if this were the case the resident would have to purchase a new benefit in the future. Mr. Tousley stated he did talk with Summit County and they indicated if they still owned the lines and it was theirs to deal with they would issue the refund if requested. Ms. Whipkey asked if Barberton would have any say and Mr. Markey replied no as we collected that fee. Mr. Pelot stated the amount is a total of \$1710.00; \$1,600.00 for the benefit and \$110.00 for a permit fee. Mr. Pelot moved to place this on the agenda, with emergency language, and waiving the readings, seconded by Mr. Tousley.

Roll Call: Yes: Pelot, Tousley, Kernan  
No: None

Motion passed 3-0.

#### Backhoe-Loader Lease Agreement

Mr. Pierson discussed the emails of Mr. Messner and that the funds are in the budget adding he had missed the previous meeting, but expected the Board of Control had approved it. Mr. Pierson asked if we can just do an outright purchase and Mr. Messner replied he would rather not as he does not have the \$100,000.00 sitting in around. Mr. Messner stated normally when dealing with these kinds of amounts he goes with a lease to purchase option. Mr. Messner noted that with the lease option we are paying \$5,900.00 in financing over the next five (5) years. Mr. Pierson asked if we have the option to pay off early within the first twelve (12) months without a penalty. Mr. Messner stated that usually they don't but he could check on that. Mr. Pierson stated he prefers we pay these things off as quickly as possible instead of leasing, if the money is available. Mr. Messner stated he does not have these funds available and would not have that until the 2017 Budget unless we pull from another account somewhere. There was discussion of the three (3) different pieces of equipment and the various sizes, and cost breakdowns. Mr. Messner stated the Service Dept. has gone with John Deere products and they have better warranties. Mr. Messner stated that with the current one we own, we have spent over \$5,000.00 - \$7,000.00 last year for repairs and its over twenty (20) years old. Mr. Messner indicated that Mr. Reynolds was not interested in a trade in and would rather hold onto this and nurse this along. Mr. Pierson stated he would like to have Mr. Reynolds present next week for any questions. Mr. Pierson moved to place this on Councils next agenda, seconded by Ms. Whipkey.

Roll Call: Yes: Pierson, Whipkey, Tousley.  
No: None

Motion passed 3-0. Ms. Whipkey asked how soon can we get this and Mr. Messner stated as soon as Council approves the legislation we could expect delivery very soon. Mr. Messner stated upon deliver the first payment would be due in the amount of \$5,929.66. Ms. Whipkey stated she would like to be able to waive the one of the readings before we have a breakdown on the old one, and Mr. Pierson stated that he would rather go all three readings or at least until Mr. Reynolds is present next week.

**Unfinished Business:**

Mr. Tousley asked Mrs. Carr about the Johnson Road paving project and if we have any warranty for this project? Mrs. Carr stated it is under warranty and she has spoken with the County on this and they are very upset about the conditions as well. There will be full repairs made and they may end up scraping the road and redoing it. There was such a gap in some areas we are ending up having to do some temporary repairs. In addition the contractor has been contacted and they are ultimately responsible for that job.

**New Business:**

Mr. Rodgers discussed the email from Mr. Markey relating to the ordinance as to the holiday pay and the justification of the payment to the Administrative Officer (see attached). Mr. Rodgers stated he is getting flooded with phone calls from angry citizens. Mr. Rodgers asked if any past Safety Directors have also received the same pay? Mayor Zits stated that we are looking into this. Mr. Messner stated that the Ordinance #98-2005 was passed before many of us were here, and it has been on the books for some time and he is working on verifying this now. Mr. Messner asked if he is supposed to ignore the laws already in place and not issue the check? Mr. Rodgers stated he did not know if this is a question of the law. Mr. Markey stated that the ordinance is perfectly clear, and any Council can change the ordinance, but it is clear. Mr. Rodgers asked if the Administrative Officer is involved in the union negotiations and if so isn't there a conflict here? Mr. Markey stated that the Administrative Officer is the Personnel Director, Safety Director and Director of Public Service and yes they would participate in union negotiations. Mr. Rodgers stated if they participate in negotiations and questioned if they should benefit from those negotiations and is it a conflict? Mr. Markey stated that the officers and members in the Fire Department get the holiday pay of eight (8) days. This is separate from the ordinance where the Fire Chief and Police Chief and whoever is full time and supervises those departments. It is separate from the full time supervisors and is separate from the union negotiations and he does not find it to be a conflict. It is authorized by the ordinance. Mr. Rodgers stated that he has taken the time to check other communities to see if they also have this same pay and he can find none. Mr. Markey stated that Council can change the Ordinance at any time. The fact that this was brought up last week is obviously a planned attack and the language of the ordinance is clear, and if you want to change the ordinance than you can so move to do then. Mr. Pierson argued that is not and that as a contract employee it's not your place to sit there and correct anyone on Council. Mayor Zita asked to speak and was not recognized by Mr. Pierson.

Mr. Rodgers stated that Mr. Markey works for the City of Norton and is to represent both the Council and the Administration to which Mr. Markey concurred. Mr. Rodgers stated that you had better start showing more lack of bias than what you are showing now. Mr. Rodgers stated this is not a planned attack by him and not to accuse him of that. Mr. Markey clarified that he is not showing bias in his opinion, his opinion was asked for and he gave it. Mr. Rodgers stated he wants to know who else received this. Mr. Rodgers asked Mayor Zita, Mr. McGlone, Mr. Pelot as Council members then and Mr. Kernan, who was Mayor then, what was their intent on this back in 2006? Mr. Rodgers asked who was the Service Director at that time and Mayor Zita replied it was Mr. Collins. Mr. Rodgers asked if Mr. Collins also received the holiday pay and Mayor Zita replied he believed so. Mr. Pelot stated his question would be if the Safety Director does show up on calls during the holidays and required to be on call then why wouldn't they be entitled to it? Mr. Rodgers stated he knows that the City of Akron never did this and Wadsworth does not do this, and most townships do not do this and he really feels this is a conflict. You cannot negotiate benefits and partake in them. Mr. Markey stated again this is not part of union negotiations and is a completely separate issue by ordinance. Mr. Rodgers stated you can paint it any way you want, but he wants his City negotiator to be negotiating away from costly benefits and not benefiting from them. Ms. Whipkey stated that this is an ordinance, and ordinance that has nothing to do with the contracts and it is written into our City code that states they will receive it. Our City Administrator happens to fall into that because she is the head of Safety. The person in that position is on call during these holiday times, they come in after hours, take phone calls after hours. Ms. Whipkey noted that our current Administrative Officer has come back into town after hours to meet many obligations. Ms. Whipkey stated she does not care what Akron and Wadsworth are doing. This has no part of the negotiating because she has been separated from this all together. Mr. Rodgers stated Ms. Whipkey apparently does not understand his objection. We should care what other communities do, case in point in Akron the Chiefs don't even get this. We should care what others do and do to it right and save as much money as we can as this isn't the good old boys club. Mr. Markey stated again his point is that it is not fair to attack a person when it's allowed for by ordinance. Mr. Rodgers stated he did not attack anyone or refer to our present Administrator. Mr. Rodgers asked again if the others that did or did not get this. Mr. Markey asked if it would be relevant and Mr. Rodgers responded yes, if they did not it's obvious the intent was not to give this to the Administrative officer. Mayor Zita stated that if the past ones did not receive this pay and they were entitled to it then do we owe them a refund? Mr. Rodgers stated that the ways things are run in Norton, we would probably end up owing them a refund and what kind of question was that. Mayor Zita answered we are a new Administration and he is wanting to know what Mr. Rodgers has to say on if we owe the others if they did not get it. Mr. Rodgers responded to not ask him as it was a question for Mr. Markey and if we do, it's another mistake made by this City and the Administration. Mayor Zita stated just because you do not agree with it; does not mean it is a mistake. Mr. Rodgers stated the reason he doesn't agree with is due to the complaints from the residents because we can't find ways to save the Nash Heights residents money or get help and now we can spend this money. Mr. Markey pointed out it was very convenient when the question was raised. Mr. Pierson stated he got calls too and Mr. Markey stated they had two years to bring this up.

Ms. Whipkey asked Mr. Markey if this is something that should rather be discussed in Executive Session. Mr. Pierson stated no its not and was gaveled down for continually talking over Ms. Whipkey and others. Ms. Whipkey admonished Mr. Pierson for having no respect for the President of Council ever since she was elected to it and Mr. Pierson stated that was because she tried to hide things. Ms. Whipkey then asked Mr. Pierson just exactly where he got the information on the check and amount, as well as how, to which Mr. Pierson offered no response. Mr. Markey stated as much as he would like to put it in executive session, it's already an ordinance as it is written, and you can make changes. Ms. Whipkey stated that if anyone wants to change this they would have to make a motion and Mr. Markey stated that is his recommendation. Mr. Pierson stated from here on out he wants to see a monthly payroll report along with the others. Mrs. Carr stated that she was the first one under this Administration to be hired and she asked about the benefit package. The entire benefit package was discussed in Executive Session and you all may or may not have been aware of all of the ordinances on the books. Mrs. Carr stated that it was discussed and she recalled emails and conversations with Mr. Rodgers back then about the details of Chapter 258.04 and 258.08 which relates to vacation accrual and holiday and this was in her Personnel Order which all of you received. She had stated to Mr. Rodgers when she was about to be confirmed that these are the two ordinances that apply to this position. At the time Mr. Rodgers was President and stated if it's in the Ordinance there was no need to bring it before City Council. Mrs. Carr stated that she was paid this in 2014 and in 2015. Mrs. Carr stated that if you don't want her to have this then change the ordinance. Mrs. Carr stated this leads her to believe this is a witch hunt. Mrs. Carr stated in her opinion she has done no wrong here, the City has followed the ordinance we have in place. In terms of the issue of negotiations this is something she did not negotiate this because it was already listed in an ordinance in place and long before her. Mrs. Carr stated she does not feel this is worth bringing on World War III; it's not going to do the City any good; the reputation of Norton or her professional reputation. Mr. Rodgers stated he does not recall those conversations and he is not attacking Mrs. Carr. Mr. Rodgers argued again that this is a union conflict, and Mrs. Carr stated that you as Council had this for approval adding that she is always asked to leave executive sessions when Council speaks on her benefits or salary. Mrs. Carr stated that she believes one of the concerns back before she got here were that both chiefs had issues with the compression issue and she suspects this was put in place to offset that. That is something for you as Council to have in the non-bargaining. Mayor Zita reiterated that if Mr. Rodgers did not agree with it, did not mean it was wrong. Mr. Rodgers stated he had spoken his objection a number of times and if the Mayor and Madame President doesn't get it he was sorry, but he still wants to see what other Administrative Officers received this same pay from the time it started until 2006. Mr. Rodgers stated in fielding the phone calls this past week, he is also learning that some Nash Heights residents have misconceptions in the certified letters they received. Some believe they are also getting water. Some believe the \$11,200.00 is all they owe for everything. Mr. Rodgers announced his town hall meeting for Nash Height's residents on April 6, 2016 and we need to get the message out to them and be clear.

### **New Business**

Ms. Whipkey stated the City received the final costs for the Special Election for the Council vacancy seat being a \$12,541.74. Council does not need to take any action on this due to the \$15,000.00 limit. We will be issuing a check for this amount otherwise this would have ended up on the city's property tax.

### **Topics for the next Work Session:**

Cleaning Service Contract

Mrs. Carr noted there would be an update for Silver Springs Drive

### **Public Comment:**

James Barnett, 2632 Berry Road, Norton, Ohio, thanked the voters for the passage of the Fire Levy, and noted that he is disappointed in the lack of support for the schools. Norton residents to pay high taxes and many will have assessments and he for one has an assessment on his taxes. Mr. Barnett stated that he has heard many of his neighbors say they will never vote for a levy while they are paying for assessments. Mr. Barnett stated moving forward, he believes other residents are afraid of having sewer assessments coming their way. Mr. Barnett stated that the residents should be properly maintaining their septic systems and would like to see Council encourage everyone to do the same. The City should pass an ordinance requiring every resident to pump their tanks every four (4) years. In the first year we could focus on Ward 1, second year Ward 2, etc. Mr. Pelot stated that Summit County has a program in the process and this will require everyone to have their system inspected and every two (2) years to be pumped and would require permits to have a septic system. Ms. Whipkey stated she has received comments from some residents that received this letter already and there is a \$30.00 fee for this and the different contractor that comes out to empty tanks will be doing an on-site inspection in addition to the pumping services. Ms. Whipkey stated that this is not just about what is happening in Norton. It's all a part of the Federal Clean Water Act and the phases that they have been going through. Mr. Rodgers stated he knows the County may be working on this and sometimes like in the past things will slip through the County. Mr. Messner noted that the City has received the letter and they have inspected the Fire Station and we have paid the \$30.00 fee. Mr. Pelot noted that without the inspection you will not get a valid permit.

### **Public Updates:**

Mayor Zita noted the trash hauler bids were opened today at noon and we are still working on all of the bid tabulations and will be put into a spreadsheet. Mrs. Carr stated that this information will need to be out to everyone soon because they are only good for 60 days. Mr. Pierson asked who were the bidders, and were they present?

Mrs. Carr noted the three that were here and submitted were; Rumpke, Republic and Kimble submitted their bids. Waste Management did receive the bid package but did not respond. Mrs. Carr stated that the current contract does not expire until July 1, 2016. Ms. Ms. Whipkey announced the Charter Review Commission's next meeting is March 24, 2016 at 7:00 PM here in Council Chambers. Ms. Whipkey noted that all of their meetings are open to the public.

**Adjourn**

There being no other business to come before the Committee Work Session, the meeting was adjourned at 7:55 PM.

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Charlotte Whipkey, President of Council

**\*NOTE: THESE MINUTES ARE NOT VERBATIM\***

**\*\*ORIGINAL SIGNED AND APPROVED MINUTES ARE ON FILE WITH THE CLERK OF COUNCIL.\*\***

**All Committee Meetings will be held at the Norton Safety Administration Building, unless otherwise noted.**



Zimbra

karlar@cityofnorton.org

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**Holiday Pay Issue**

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**From :** Markey, Justin <JMarkey@ralaw.com>

Tue, Mar 15, 2016 09:15 AM

**Subject :** Holiday Pay Issue

2 attachments

**To :** Dennis Pierson (dennispierson@cityofnorton.org) <dennispierson@cityofnorton.org>**Cc :** Valerie Carr <adminofficer@cityofnorton.org>, Mike Zita (mayorzita@cityofnorton.org) <mayorzita@cityofnorton.org>, Ron Messner <financedirector@cityofnorton.org>, Karla Richards <karlar@cityofnorton.org>, Charlotte Whipkey <charlottewhipkey@cityofnorton.org>, Dennis McGlone (dennismcglone@cityofnorton.org) <dennismcglone@cityofnorton.org>, Scott Pelot (scottpelot@cityofnorton.org) <scottpelot@cityofnorton.org>, Kernan, Joe (joekernan@cityofnorton.org) <joekernan@cityofnorton.org>, Paul Tousley (paultousley@cityofnorton.org) <paultousley@cityofnorton.org>, Rick Rodgers (rickrodgers@cityofnorton.org) <rickrodgers@cityofnorton.org>

Mr. Pierson,

I have reviewed the issue of whether the Administrative Officer is entitled to Holiday Pay under Section 258.04 of the Codified Ordinances of the City. Section 258.04 provides as follows:

**258.04 HOLIDAYS.**

(a) Employees shall observe the following 11 holidays: New Year's Day, Martin Luther King Day (third Monday in January), President's Day, Memorial Day (last Monday in May), Independence Day, Labor Day (first Monday in September), Columbus Day (second Monday in October), Thanksgiving Day, the day following Thanksgiving Day, Christmas Eve and Christmas Day, all full days. If any of the preceding holidays falls on a Saturday, the holiday will be observed on Friday. If any of the preceding holidays falls on a Sunday, the holiday will be observed on Monday.

(b) The Fire Chief, Chief of Police **and any other full-time non-bargaining unit supervisory employee of the Fire and Police Divisions** is hereby granted one day of pay in addition to his or her regular earnings for each of the holidays set forth in division (a) hereof, to be paid on December 1 of each year.

Section 258.04(b) clearly states that any "full-time non-bargaining unit supervisory employee of the Fire and Police Divisions" is entitled to one day pay for each of the holidays listed in Section 258.04(a). This is not a "bonus," but instead serves to compensate those employees for having to be on call and ready to report during holiday hours.

Under the Section 5.05 of the Charter of the City, the Administrative Officer acts as the Director of Public Safety of the City. The Director of Public Safety is a full-time, non-bargaining supervisory employee of the Fire and Police Divisions. The text of Section 5.05 of the Charter is set forth below.

**SECTION 5.05 DEPARTMENT OF PUBLIC SAFETY.****A. DIRECTOR OF PUBLIC SAFETY.**

The Mayor shall appoint a Director of Public Safety who must be confirmed by a majority of the members elected and appointed to Council. The Administrative Officer shall be the Director of Public Safety until such time as Council shall by ordinance provide for some other person as Director of Public Safety. The Department of Public Safety shall include, but need not be limited to, a Police Division and a Fire and Emergency Medical Services Division. The Department of Public Safety shall be organized by ordinance of Council.

**B. DUTIES OF THE DIRECTOR OF PUBLIC SAFETY.**

The Director of Public Safety shall be responsible for the enforcement of all police, fire and emergency medical services and all health, safety and sanitary requirements that may be prescribed by resolutions and ordinances of the Municipality or by laws of the State of Ohio. The Director of Public Safety shall have all the powers and duties connected with and incident to the appointment, regulation and government of the Department of Public Safety, and the removal and discipline of the officers and employees thereof, as are now or may hereafter be conferred upon the Director of Public Safety of a city by the general laws of the State of Ohio as supplemented by legislation of Council to the extent they are not inconsistent with this Charter.

My opinion is that Mrs. Carr (or any other Administrative Officer) is clearly entitled to the Holiday Pay granted under Section 258.04(b) of the Codified Ordinances.

Thanks,

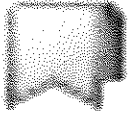
Justin



Justin P. Markey

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