



**NORTON CITY COUNCIL  
REGULAR COUNCIL MEETING  
MONDAY, NOVEMBER 10, 2008**

Roll Call: Ken Braman  
Brenda Hlas  
Tom Jones  
Dennis McGlone  
Bill Mowery  
Scott Pelot  
Mike Zita

Also Present:  
Mayor David Koontz  
Rick Ryland  
John Moss  
Pete Kostoff  
Karla Richards  
Ann Campbell

The Regular Council Meeting convened on Monday, November 10, 2008 at 7:02 PM, in Council Chambers of the Safety Administration Building. The meeting was called to order by Scott Pelot, President of Council, followed by the Pledge of Allegiance and a moment of silent prayer. Mr. Pelot reminded everyone wishing to speak that if you do not have the floor, please keep your comments to yourself.

**COMMITTEE OF THE WHOLE:**

Mr. Braman briefly discussed Ord. #87-2008, and moved to remove the four (4) parcels from the legislation and send those parcels back through the Planning Commission for them to review and hold hearings on the issue, seconded by Mrs. Hlas. Mr. Braman stated that some of the residents felt they were not part of the discussion at the Planning Commission level, and wanted to make comments. Mr. Braman stated that the four (4) parcels are, #4602442, #4604497, #4600672, and #4600671. Mr. Mowery clarified that these four (4) parcels are the ones the residents had so much of an issue with during the Public Hearing at the last Council Meeting.

Roll Call: Yeas: Braman, Hlas, Jones, McGlone, Mowery, Zita, Pelot  
Nays: None

Motion passed 7-0.

Mrs. Hlas stated that Ord. #96-2008 through Ord #99-2008 does not state that they were prepared or approved by the Law Director, though his office has looked at these and the statement should be on the original ordinances that are to be signed.

Mr. Zita moved to add Ord. #100-2008 to the agenda, seconded by Mr. Jones. Mr. Zita stated that he would be asking later on to waive the second and third readings and that this language is stated in the ordinance. Mr. Zita explained that it was originally discussed to address this at the next Work Session, however the members have now been selected and there is no reason for delaying this process.

Roll Call: Yeas: Zita, Jones, Braman, Hlas, McGlone, Mowery, Pelot  
Nays: None

Motion passed 7-0.

Mr. Pelot referred to the Law Director to discuss his legal opinion surrounding Issue #26. Mr. Kostoff discussed the comments the Administration had received as to why Issue #26 was not challenged prior to the election. Mr. Kostoff stated that Issue #26 could not be challenged until the voters approved Issue #26 and the Summit County Board of Elections certifies the results of the election. Until that time, the City can only challenge the sufficiency of the petitions required, meaning the signatures obtained, which is basically a very limited review. Mr. Kostoff noted a case in the Ohio Supreme Court that he feels is almost right on point, and acknowledged that the Administration had been criticized that if we felt this was unconstitutional, why didn't we act earlier. Mr. Kostoff referred to the case of Morris vs City Council-The City of Macedonia 1994, found in 71 Ohio St. 3<sup>rd</sup> 52. The Ohio Supreme Court has held that the City Council's review of an initiative petition is limited to inquiring into the defects apparent on the face of the petition, and that City Council may not engage in judicial or quasi-judicial determinations prior to passage. It is improper for any city Council to challenge a petition on the basis that they believe a proposed amendment would be unconstitutional at that time. Mr. Kostoff cited a case, State Ex Rel Committee for Charter Amendment City Trash Collection vs City of Westlake 2002. Mr. Kostoff stated that this is found at 92 Ohio St. 3<sup>rd</sup> 100-108. Such challenges can only be made after the proposed amendment has been approved by the voters, and the results are certified by the Board of Elections. Mr. Kostoff cited Jurcisin vs The Cuyahoga County Board of Elections 1988, found at 35 Ohio St. 3<sup>rd</sup> 137-146. Mr. Kostoff stated that the reason we did not act prior to the election is because the law does not give us the ability to act prior to the voters making their decision. Mr. Kostoff stated that he does not want to engage in the "this guy said that, and this guy said whatever", and as he had stated at previous Council meetings, it was the form and manner in which this proposed initiative measure attempted to address the reduction of Council. Mr. Kostoff stated that he has said it before and he will say it again, it is not in his interest nor is it his business to advise the public or Council on whether they wish to reduce Council from seven (7) to five (5). However, in the manner in which it is done, it is within his purview to comment as to whether or not the fact that it is constitutional in the manner. Mr. Kostoff stated that there is a case that is almost right on point, and that good lawyers will tell you that there is never a case that is exactly the same. Mr. Kostoff cited case State Ex Rel Mirlisena vs Hamilton County Board of Elections 1993 found at 67 Ohio St. 3<sup>rd</sup> 597. This held that a provision of a term limit amendment to a City Charter stating that consecutive terms of service on Council to which members were elected prior to a certain period would be counted in determining eligibility for office, and had retroactive effect in violation of Article 2 Section 28 of the Ohio Constitution. Mr. Kostoff explained that in this case they attempted to put term limits in and they went back to a prior period of time and the Ohio Supreme Court said that you cannot go back, you can only go forward from the time you pass this amendment. Mr. Kostoff stated that in analyzing that case with our current situation to reduce Council from seven (7) to five (5) effective December 31, 2011, he has no quarrel with that. However, what they did was to go back retroactively to the previous election in which people were duly elected and say we now are going to reduce your term of office retroactively, he did not think you can do this under the law. Mr. Kostoff stated that the Ohio Supreme Court is pretty much right on point with our case here and saying that you cannot go back retroactively and attempt to eliminate a provision of vesting of a right, you can't do it and that is his argument. Mr. Kostoff stated that Mr. Jones had previously asked him how he felt about the City's Charter and his answer was that he has the same responsibilities and duties as you do, it's a serious one to raise your right hand and swear to uphold the Charter, the Constitution of the State of Ohio and the United States. The Constitution of the State of Ohio is instructive; it

says that in Article 2 Section 28 that you cannot retroactively do that. Mr. Kostoff stated that as Law Director it is his responsibility to advise all of Council on matters that are illegal, and he cannot suggest that this matter is legal. Some might say that the people voted for this and he does recognize that we are a Democracy and people vote every day. Mr. Kostoff took it one step further to the extreme, saying that if an initiative measure came forward stating that in this city everyone can carry a gun. We know that in the State of Ohio there are disabilities, such as felons cannot carry a gun, but in Norton you can. The mere fact that the people vote for it does not make it lawful; does not make it constitutional. Mr. Kostoff stated that the argument is that he does not think the manner that this group attempted to reduce this Council is legal and he believed that a Judge would fully agree with him on that. Mr. Kostoff stated that he is not going to prejudge the issue, however the Courts respect that the public has the initiative powers and the Court would likely be able to fashion something that is likely to resolve this issue that effective on January 1, 2011 the Council is reduced from seven (7) members to five (5). Mr. Kostoff cited Chapter 733.56 of the Ohio Revised Code which states *“The village solicitor or city director of law shall apply, in the name of the municipal corporation, to a court of competent jurisdiction for an order of injunction to restrain the misapplication of funds of the municipal corporation, the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the municipal corporation in contravention of the laws or ordinance[s] governing it, or which was procured by fraud or corruption”* Mr. Kostoff stated that the instructed part of that is the abuse of corporate powers. These cases in Ohio, under the issue of abuse of corporate powers, deal with the constitutionality of passing ordinances and resolutions where the public officials don't fulfil their obligations. These are what the Courts have defined as abuse of corporate powers, whether it is by an initiative or any other measure and by action of the Council, and we fall under that category. Mr. Kostoff read a section from Charter Section 504 which states *“The Solicitor shall represent the Municipality in all suits or cases in which it may be a party and shall prosecute all offenses against the ordinances of the Municipality and such offenses against the laws of Ohio as may be required”*. Mr. Kostoff stated that ORC 733.56 and Charter Section 504 place in the power of the Law Director the responsibility to ensure that matters that are placed upon the laws in our community are constitutional. Mr. Kostoff stated that it is his intention, as soon as the election results are certified by the Summit County Board of Elections, to file a Declaratory Judgement in the Court of Common Pleas and an injunction related to that. Mr. Kostoff stated that the injunction relates to asking the Court to make a determination as to whether it is constitutional or not. Mr. Jones stated that when you first said that this was unconstitutional, you probably knew prior because you had this information since around August 18, 2008 or so. Mr. Kostoff agreed, adding that until this was voted on by the people it was hypothetical. Mr. Jones stated that back on September 2, 2008 Mrs. Richards sent certified copies of such to Mr. Gary Hagen at the Board of Elections, and Mrs. Henderson at the Ohio Secretary of States office. Mr. Jones stated that a lot of things are unconstitutional, we are a Charter city. Mr. Jones stated that he was not sure what violates a Charter city in this respect with people voting in favor in all wards and precincts. Mr. Jones referred to the term *“If you put it in writing there would be no fighting”*. Mr. Jones stated that he was appalled when he received a memo from Mrs. Richards on Wednesday; it is not her fault she was instructed by Mr. Ryland, and he has nothing to do with Council, it's Mr. Pelot the Council President.

Mr. Jones stated that the people have spoken and questioned if you take this to court how much is that going to cost, don't we pay you \$175.00 per hour? Mr. Kostoff replied that yes that hourly rate is correct, and he does not know the cost or the time involved. Mr. Jones questioned that Mr. Kostoff has used up his money on other legal matters as far as the Budget

goes? Mr. Kostoff stated that he has not used up anything, he responds to inquiries and questions from the public officers of the City of Norton. He does not act on anything unless he is directed to do so by the Mayor, the City Administrator, Council or the Boards and Commissions. In terms of what they ask my office to do, if it is covered by the retainer then it's covered. If it is not covered, it is charged out on an hourly basis and the itemized bills are submitted. Mr. Jones instructed Mr. Moss to submit copies of all bills from Mr. Kostoff's office to all of Council from this point going forward. Mr. Jones stated that he feels comfortable with the people, they voted them in and now they have voted them out. Mr. Kostoff stated that he hoped Mr. Jones understood what he said, it is not his personal position if Council should be reduced from seven (7) to five (5), it's a question of whether or not legally, the enforcement of this is constitutional or not. Mr. Kostoff stated that he has found a case that is pretty darn right on point with its retroactive application. Mr. Kostoff stated that this group didn't come to this Law Director, they are not required to, however, if they had he would have given them his opinion. Mr. Jones asked Mr. Kostoff what the vote count was with that ruling, was it close or far between? Mr. Kostoff replied that he does not know, and it's not relevant, and the number of votes doesn't matter. If the law is constitutional, then it's constitutional. If the law is unconstitutional, then it's unconstitutional, and it is a very serious thing. We all raise our right hands to an obligation of protecting the laws of this community. Mr. Kostoff stated that as long as he is here he would continue to do that. Mr. Kostoff stated that someone said that he was attempting to intimidate the voting electorate of this community, absolutely not. He did not go out and print out campaign publications regarding his concerns, but he did make them pretty succinctly clear. Mr. Kostoff stated that there is an issue as to how this is to be implemented, and it is not constitutional in his opinion, so I guess we will go and find out.

**CONSIDERATION OF THE MINUTES:**

Minutes of the Regular Council Meeting of October 27, 2008 were approved as written.

Minutes of the Committee Work Session of November 3, 2008 were approved as written.

**COMMUNICATION FROM THE PUBLIC:**

Ms. Neva Gibson, a Norton resident, thanked Mr. Kostoff for answering many of her questions. Ms. Gibson stated that as elected officials and the City Administrator, it is their moral and ethical responsibility to uphold the laws of this City and she encouraged Council and the Administration to investigate what the law is on Issue #26.

Mr. Andrew Lehner, a Norton resident, stated that he and his father both supported Issue #26 and that it is a good idea to save the city money. Mr. Lehner stated that he has been looking into the Federal Bill of Rights, and his history books that he has and he is a big history buff. The comments he has heard tonight really make him upset, it's not unconstitutional, read the laws. Mr. Lehner stated that his Dad knows all about this issue and he agrees with him that if you try and take us to court over Issue #26, he couldn't say what was going to happen. The voice of the people wanted it this way and that is why they voted.

Ms. Gayle Brenner, a Norton resident, spoke about Issue #26 and also thanked the Law Director for addressing the issue. Ms. Brenner stated that she felt it was unnecessary and it takes away the representation from the citizens that we desperately need. Ms. Brenner stated that this needs to be looked into further and if there are any additional fees for it, the committee that started all of this should be the ones that should have to pay for it. You pass

something for special elections that the fees should be paid for, and it should stand for this issue as well.

Mr. Don Weigand, a Norton resident stated that it looks as though we have another controversial issue here in Norton, and with some additional expense. Mr. Weigand stated that he has heard about Issue #26, and the State of Ohio's Constitution and it can be looked at both ways. Mr. Weigand stated that he is thinking about respect for the city, the wishes of the people and the wishes of Council. Mr. Weigand stated that if this goes to court it will cost some money and the Council people involved will have some egg on their face with the electorate and he does not want to see that happen. Mr. Weigand discussed his numerous requests for Maco Road to be paved, we have financial constraints within the Police and Fire Dept., Mr. Weigand stated that we need to streamline decisions here. We have not seen the population grow, and it is not projected to grow in this area. Mr. Weigand suggested a solution, and proposed that these two (2) Council people resign effective January 1, 2009 and serve elsewhere within their political organizations. In doing so they would have a better chance at seeking a re-election in the future. Mr. Weigand stated that he does not like spending \$175.00 per hour for something that does not build us a road or a bridge or a school. Mr. Weigand discussed selective enforcement of the laws and illegal immigration, we are all paying for this.

Ms. Charlotte Whipkey, a Norton resident, discussed Issue #26 and stated that she has listened quite well and she does think it's relevant on how the votes were, with all four wards accepting it and every precinct approved it. Ms. Whipkey stated that she also would be interested to know what the votes were in the case law referenced earlier. Ms. Whipkey stated that she fails to see a connection with a trash service versus a reduction of Council members. Ms. Whipkey stated that she did look briefly at the case that is being represented here as far as the term elements, which is no way near a reduction of Council. Ms. Whipkey stated that she believed our Law Director was negligent on this issue because she would have never approached the people with any kind of petition of legislation that she did not think would stand. Ms. Whipkey stated that the Bill of Rights states that we can change our government in a Charter city at any time that we deem it necessary. Ms. Whipkey stated that she understands what the Law Director is saying about their term is not up, but there again it's our thing to do and the people approved it. The fact of it is they never had the opportunity before. Ms. Whipkey stated she could see that you'd be taken if I had brought it out saying lets make it retroactive to where they not only lost their jobs or positions, but that they would also have to pay back all of the money they made. Ms. Whipkey discussed the comments made about the committee being sued, well she is the committee. Ms. Whipkey commented on a couple of other committees that could have been sued for false things they put out and didn't pass even closely. Ms. Whipkey asked are we going to pay to take away something the people unanimously approved in all four (4) wards in all twelve (12) precincts? Ms. Whipkey stated that if there was such evidence that this was wrong whether it passed or not, someone who really had the city's best interests in mind would have produced it and published it. They should not have waited to when we are already over budget on their \$175 per hour payment that they have been here for this short period of time with two (2) more months to go.

Mr. Alex Stavarz, a Norton resident, spoke about Ord #87-2008 which has already been amended and he was in favor of Ord #87-2008 as it was originally introduced. Mr. Stavarz stated that he attended the public hearing and listened to the comments made. Most of the comments that were made were ridiculous with the exception of what Mr. Ryland had to say.

Mr. Ryland had stated this happens everywhere and it is not unusual. Mr. Stavarz stated that fifteen (15) years ago Norton Council rezoned from the center of Norton, along Cleveland-Massillon down to the library to B-2. Change did not come quickly but we had some quality businesses come in along this area. Mr. Stavarz discussed another example of a business area within a residential area, which is Gardner Blvd. This area was not the premier residential area, however it is still a very nice area and he suspected these residents now find it a real asset to have these small businesses so close. Mr. Stavarz stated that this is his community too and he expects Council to pass this as originally proposed by the Planning Commission, do your job for the whole community.

Mrs. Elaine Tompkins, a Norton resident, discussed the Chief's Ord. #93-2008 and #94-2008 stating that although you are proposing to waive the second and third readings, there are still some outstanding items that need to be addressed. Mrs. Tompkins asked Council to please consider holding the first reading and address this again at the next work session before it gets any further.

**INTRODUCTION OF NEW LEGISLATION:**

**ORD #92-2008**

Mr. Zita offered Ord. #92-2008 for its first reading, and asked the Clerk to read it:

AN ORDINANCE AUTHORIZING THE ADMINISTRATION TO DISPOSE OF PROPERTY NOT NEEDED FOR MUNICIPAL PURPOSES AND DECLARING AN EMERGENCY.

Mr. Zita moved to waive the second and third readings, seconded by Mrs. Hlas. Mr. Zita stated that this is a 1992 ambulance with a broken frame that is being sold to the Norton City Schools.

Roll Call: Yeas: Zita, Hlas, Braman, Jones, McGlone, Mowery, Pelot.  
Nays: None

Motion passed 7-0.

Mr. Zita moved to adopt Ord. #92-2008, seconded by Mrs. Hlas. Mr. Pelot added that this vehicle cannot be used for rescue or transporting patients, and the school can use it for spare parts.

Roll Call: Yeas: Zita, Hlas, Braman, Jones, McGlone, Mowery, Pelot.  
Nays: None

Motion passed 7-0.

**ORD #93-2008**

Mr. Zita offered Ord. #93-2008 for its first reading and asked the Clerk to read it:

AN ORDINANCE AMENDING SECTION 240.01 OF THE CODIFIED ORDINANCES OF THE CITY OF NORTON TO AMEND THE METHODOLOGY FOR THE SELECTION OF THE CHIEF OF POLICE UPON THE OCCURRENCE OF A VACANCY IN THAT POSITION, AND DECLARING AN EMERGENCY.

First reading only.

**ORD #94-2008**

Mr. Zita offered Ord. #94-2008 for its first reading, and asked the Clerk to read it:

AN ORDINANCE AMENDING SECTION 242.01 OF THE CODIFIED ORDINANCES OF THE CITY OF NORTON TO AMEND THE METHODOLOGY FOR THE SELECTION OF THE FIRE CHIEF UPON THE OCCURRENCE OF A VACANCY IN THAT POSITION, AND DECLARING AN EMERGENCY.

First reading only.

**ORD #95-2008**

Mrs. Hlas offered Ord. #95-2008 for its first reading and asked the Clerk to read it:

AN ORDINANCE ADDING SECTION 208.05 TO THE CODIFIED ORDINANCES OF THE CITY OF NORTON, OHIO TO PROVIDE FOR THE USE OF REVERSE AUCTIONS TO AWARD CONTRACTS FOR SERVICES OR SUPPLIES, AND DECLARING AN EMERGENCY

First reading only.

**ORD #96-2008**

Mrs. Hlas offered Ord. #96-2008 for its first reading and asked the Clerk to read it:

AN ORDINANCE TO AUTHORIZE ADVANCES FROM THE GENERAL FUND INTO VARIOUS FUNDS AND DECLARING AN EMERGENCY.

Mrs. Hlas moved to waive the second and third reading, seconded by Mr. McGlone.

Roll Call: Yeas: Hlas, McGlone, Braman, Jones, Mowery, Zita, Pelot  
Nays: None

Motion passed 7-0.

Mrs. Hlas moved to adopt Ord. #96-2008, seconded by Mr. McGlone. Mr. McGlone clarified with Mr. Moss that this was just a temporary movement. Mr. Moss concurred adding that advances are good to the next fiscal year and must be repaid.

Roll Call: Yeas: Hlas, McGlone, Braman, Jones, Mowery, Zita, Pelot  
Nays: None

Motion passed 7-0.

**ORD #97-2008**

Mrs. Hlas offered Ord. #97-2008 for its first reading and asked the Clerk to read it:

AN ORDINANCE TO AMEND THE APPROPRIATIONS FOR THE CURRENT EXPENSES OF THE CITY OF NORTON FOR THE FISCAL YEAR ENDING DECEMBER 31, 2008.

Mrs. Hlas moved to waive the second and third reading, seconded by Mr. McGlone.

Roll Call: Yeas: Hlas, McGlone, Braman, Jones, Mowery, Zita, Pelot  
Nays: None

Motion passed 7-0.

Mrs. Hlas moved to adopt Ord. #97-2008, seconded by Mr. McGlone. Mr. Jones discussed Exhibit A General Fund amount of \$152,889.22 and asked where would this money would be disbursed? Mr. Moss replied that is for OVI Grant expenses, Interim Planning Director costs, professional fees, property tax, the largest payment is for PERS and the second largest payment is for fuel. Mr. Jones asked if any of this money would go into the Law Dept? Mr. Moss replied yes, although it was not for anything that was discussed today. It is anticipation of things that have come up, and the questions that have been asked and the costs associated with that. Mr. Jones asked if we have used more money this year than last year in that account? Mr. Moss replied that we did not have a separate account for hourly legal fees for any regular basis, this is all new. Council has provided a budget and we have been scraping everywhere trying to cover it. Unfortunately we are getting towards the end of the year and we have various crunches to deal with.

Mrs. Hlas moved to adopt Ord #97-2008, seconded by Mr. McGlone.

Roll Call: Yeas: Hlas, McGlone, Braman, Mowery, Zita, Pelot  
Nays: Jones

Motion passed 6-1.

**ORD #98-2008**

Mrs. Hlas offered Ord. #98-2008 for its first reading and asked the Clerk to read it:

AN ORDINANCE TO AUTHORIZE CREDITING VARIOUS FUNDS INCOME TAX REVENUE FOR THE FISCAL YEAR 2008 AND THEREAFTER AND DECLARING AN EMERGENCY.

Mrs. Hlas moved to waive the second and third readings, seconded by Mr. McGlone.

Roll Call: Yeas: Hlas, McGlone, Braman, Jones, Mowery, Zita, Pelot  
Nays: None

Motion passed 7-0.

Mrs. Hlas moved to adopt Ord. #98-2008, seconded by Mr. McGlone.

Roll Call: Yeas: Hlas, McGlone, Braman, Jones, Mowery, Zita, Pelot

Nays: None

Motion passed 7-0.

**ORD #99-2008**

Mrs. Hlas offered Ord. #99-2008 for its first reading, and asked the Clerk to read it:

AN ORDINANCE TO ESTABLISH A FUND, TO AMEND THE BUDGET FOR THE FISCAL YEAR ENDING DECEMBER 31, 2008 TO REFLECT THE ACCEPTANCE OF FUNDS AWARDED TO THE CITY OF NORTON UNDER AN ASSISTANCE TO FIREFIGHTER GRANT FROM THE DEPARTMENT OF HOMELAND SECURITY, TRANSFER CERTAIN FUNDS, AND TO DECLARE AN EMERGENCY.

Mrs. Hlas moved to waive the second and third readings, seconded by Mr. McGlone.

Roll Call: Yeas: Hlas, McGlone, Braman, Jones, Mowery, Zita, Pelot  
Nays: None

Motion passed 7-0.

Mrs. Hlas moved to adopt Ord. #99-2009, seconded by Mr. McGlone.

Roll Call: Yeas: Hlas, McGlone, Braman, Jones, Mowery, Zita, Pelot  
Nays: None

Motion passed 7-0.

**ORD #100-2008**

Mr. Zita offered Ord. #100-2008 for its first reading, and asked the Clerk to read it:

AN ORDINANCE APPOINTING AN ASSESSMENT EQUALIZATION BOARD TO HEAR OBJECTIONS RELATING TO THE CONSTRUCTION OF WATER MAINS, HYDRANTS AND RELATED IMPROVEMENTS AND ALL OTHER NECESSARY APPURTENANCES THERETO, COMPRISING THE PROJECT KNOWN AS CLEVELAND MASSILLON ROAD, GREENRIDGE ROAD, DURHAM ROAD, DRIFTWOOD ROAD AND CERTAIN OTHER PARCELS, WATERLINES PROJECT, AND DECLARING AN EMERGENCY.

Mr. Zita moved to suspend the second and third readings, seconded by Mr. Jones. Mr. Zita explained that the members were secured earlier than planned and we need to move forward on this. The members are Rick Maier, Jim Lada, Mike Wronkovich and alternate Sandy Chrisant.

Roll Call: Yeas: Zita, Jones, Braman, Hlas, McGlone Mowery, Pelot  
Nays: None

Motion passed 7-0.

Mr. Zita moved to adopt Ord. #100-2008, seconded by Mr. Jones.

Roll Call: Yeas: Zita, Jones, Braman, Hlas, McGlone, Mowery, Pelot  
Nays: None

Motion passed 7-0.

### **INTRODUCTION OF PRIOR LEGISLATION**

#### **ORD #89-2008**

Mr. Braman offered Ord. #89-2008 for its second reading and asked the Clerk to read it:

AN ORDINANCE AMENDING CHAPTER 1460 OF TITLE SIX OF PART FOURTEEN BUILDING AND HOUSING CODE OF THE CODIFIED ORDINANCES OF THE CITY OF NORTON, OHIO, AND DECLARING AN EMERGENCY.

Second reading only.

#### **ORD #91-2008**

Mr. Zita offered Ord. #91-2008 for its second reading and asked the Clerk to read it:

AN ORDINANCE ESTABLISHING AN IDENTITY THEFT POLICY FOR THE CITY OF NORTON AND DECLARING AN EMERGENCY.

Second reading only.

#### **ORD #84-2008**

Mr. Zita offered Ord. #84-2008 for its third reading and asked the Clerk to read it:

AN ORDINANCE REPEALING SECTION 258.18 OF THE CODIFIED ORDINANCES OF THE CITY OF NORTON, MINIMUM AND MAXIMUM RANGE SYSTEM OF COMPENSATION IN ITS ENTIRETY, EFFECTIVE DECEMBER 31, 2008.

Mr. Zita moved to adopt. Ord. #84-2008, seconded by Mrs. Hlas.

Roll Call: Yeas: Zita, Hlas, Braman, Jones, McGlone, Mowery, Pelot  
Nays:

Motion passed 7-0.

#### **Amended ORD #87-2008**

Mr. Braman offered Amended Ord. #87-2008 for its third reading and asked the Clerk to read it:

AN ORDINANCE TO REZONE VARIOUS PROPERTIES IN THE AREAS OF CLEVELAND MASSILLON, GREENWICH ROAD, CROYDON ROAD AND PLEASANT STREET, NORTON, OHIO FROM CURRENT ZONING CLASSIFICATIONS TO B-2 NEIGHBORHOOD BUSINESS DISTRICT.

Mr. Braman moved to adopt Amended Ord. #87-2008, seconded by Mrs. Hlas. Mr. Jones stated that he knows some of the residents along Croydon Road were upset because of the proposed zoning change a few weeks ago. Mr. Jones stated that this does not decrease the property values, it would increase them. Mr. Jones stated that he is zoned commercial and he

wished someone would buy him up. Mr. Jones also commented that that he sees this as spot zoning again, if anything he would like to see it go all the way down to Easton Road. Mr. Jones stated that he cannot support Ord #87-2008 right now. Mr. Braman stated that it does not mean that zoning will not still occur without these four (4) parcels, it is just sending these four (4) parcels back to the Planning Commission. Mr. Ryland clarified that Mr. Jones felt we did not take the zoning far enough, and Mr. Jones again stated he felt it should go all the way to Easton Road.

Roll Call: Yeas: Braman, Hlas, McGlone, Zita, Pelot  
Nays: Jones, Mowery

Motion passed 5-2.

### **REPORTS FROM OFFICERS, BOARDS AND COMMISSIONS:**

Mayor Koontz was present, and had no report.

Mr. Ryland stated that we would be watching the live auction for the Berry, McGowan, and Wadsworth Road waterline project this Thursday here in Council Chambers from 10:30 AM to 12:00 Noon. Mr. Ryland stated that this is our first attempt at a live internet auction and invited Council to attend. Mr. Jones asked how many he expects would be participating in the auction? Mr. Ryland replied we had twenty six (26) bid documents purchased, with fourteen (14) contractors responding.

Mr. Moss and Mr. Kostoff were present and had no report.

### **UNFINISHED BUSINESS:**

Mr. Mowery questioned the status of the Community Development Director position; are we taking applications, is this job posted? Mayor Koontz replied that we have an Interim Planning Director on staff and he is currently working on developing a better job description and that has not been posted. Mr. Mowery asked about his salary, and Mayor Koontz replied \$50.00 per hour. Mr. Mowery asked if we should be looking at whether or not we really need a full time Director and what was Mr. Pritchard's salary? Mr. Moss replied that he believed it was around \$50,000.00 full time with the regular benefits. Mr. Mowery questioned how far the previous Community Development Director moved this city forward in the past eight (8) years? Mr. Mowery asked Mr. Kostoff about Issue #26 and the petition and asked if this was not a recall petition instead of a Charter change? If this was a recall, would it fall more in line with what Mr. Kostoff was thinking? Mr. Kostoff stated that he is only looking at the proposal in the manner of going backwards and that is the constitutional defect that they have. Mr. Kostoff stated that if they had stated "at the end of their terms" instead of January 1, 2009, he would not have been speaking about this tonight. Mr. Mowery asked if it would have been a recall of two (2) at large positions, Mr. Kostoff stated that they could not use this process, they would need to do a recall process, like with Mr. Jones when he had a recall attempt. Mr. Mowery commented about the recall process with the past mayor and there is no second chance, you're gone. Mr. Kostoff stated that they did not use a recall petition, they created their own initiative and have gone back retroactively to eliminate two (2) positions, and he does not think you can do that and there is case law that says you can't do that. Mr. Kostoff stated that he was never approached, nor was he aware of what was filed with the Board of Elections, until after it was filed. Mr. Kostoff stated that once it was certified by the Board of Elections, the only way it could have been withdrawn is by the petitioner. Mr. Mowery stated that it was

so overwhelmingly approved by the voters, he believes it would lead to a recall if this is overturned. Mr. Mowery stated that you have to look at this as a position removal instead of a personal issue removing either Brenda or Scott, the people have eliminated the two (2) positions for a financial situation we are all in right now. Mr. Kostoff stated that he has no opinion, the public has spoken to reduce the number of Council from seven (7) to five (5). However, whether the public understood the manner in which they are doing it is a problem and the constitutional flaw he has spoken about. Mr. Mowery stated that the people he has talked to and those that have called him have understood that this takes effect immediately, it has immediate savings by doing that. Mr. Zita clarified the difference of required signatures for the types of petitions; a Charter amendment needs approximately 500 signatures and a recall needs approximately 1500, which is about three times the amount. Mr. Jones stated that Mr. Kostoff had known about this supposed petition passed by the people by at least August 18, 2008 because you prepared the language for Council to vote on it on August 25, 2008. Mr. Kostoff stated that he was not aware of the language until it was filed with the Board of Elections. Mr. Kostoff also recalled telling Council that it was their ministerial obligation to place it on the ballot, there is no discretion, and there is no issue of debate if it is constitutional or not. Mr. Kostoff stated that the record would reflect that he said that at that time, you have the responsibility to put it on the ballot. Mr. Jones stated that he hears Mr. Kostoff stating that he thinks it could be challenged, but you are not sure. Mr. Kostoff stated that he did not understand the question, but are you asking if this could be challenged now or then? Mr. Jones replied now, and Mr. Kostoff stated that that is what he is saying, that he thinks that it can be challenged. Mr. Mowery asked that in order for this to be challenged, you need Councils approval to do so, correct? Mr. Kostoff replied that is not correct. Mr. Mowery asked if it remains unchallenged where does it stand if we don't do anything with it? Mr. Kostoff stated that he thinks it has to be challenged because these positions would be removed as of January 1, 2009. Mr. Mowery stated that what we are asking the residents that voted yes, we are asking them to reaffirm their own vote of yes again? We are making the residents work twice as hard, we are overworking our residents on a vote they already voted on. Mr. Kostoff stated that he does not understand his point, if this provision is challenged, and a Court of Law eliminates the retroactivity and lets it stand, then the positions are eliminated at the end of their terms in 2011. At the next election in 2011, there would be five (5) positions would be up for election; four (4) wards and one (1) At Large. Mr. Kostoff stated that he does not understand Mr. Mowery's comments that the residents would be voting twice. Mr. Mowery stated that we are working our citizens too hard, it's just like the situation with the Fire Station. Mr. Mowery stated that they voted to have a new fire station built where it's at now, and now were are not building it there, we are going to build it up here. So now it's like ok I voted for this and now I am getting this. Mr. Mowery stated that if it's not challenged, where do we go from here, the two (2) At Large seats would be removed January 1, 2009. Mr. Mowery asked who challenges this and the money has to come from the people, the community. Mr. Mowery stated that they are paying out of their pockets to challenge their own vote that they already voted on. Mr. Jones stated that what he believes Mr. Mowery is trying to say is that you have to come to Council to get the money to fight the issue, and we hold the purse strings. Mr. Mowery stated that it has to come through us, in order for you to get the approval to challenge it and to charge the \$175.00 per hour or whatever. You cannot just take it upon yourself, the Administration cannot do it, it has to come through us. Mr. Kostoff replied that with respect and his reading of Charter Section 504 along with ORC Section 736, those are the powers placed in the hands of the Law Director of the City to challenge an unconstitutional measure. You do have absolute control as the legislative branch over the budget over the city. Mr. Mowery clarified that what Mr. Kostoff is saying is that he

can do what he wants to do without the approval of Council, Mr. Kostoff concurred. Mr. Mowery stated that the only way he could not do this is if we say no, you are not going to do this. Mr. Mowery stated that all his years on Council he has never had a Law Director say he is going to do what he wants to do. Mr. Kostoff stated that again that it is with respect. Mr. Mowery stated that he thought the powers were within Council, whether or not approval of what the Law Director does. Mr. Mowery stated that he was not going to vote and work these citizens any harder. Mr. Kostoff stated that his position is obligated to ensure that the implementation of whether it is an ordinance or a resolution, or a Charter provision, that it is implemented in a legal manner. Mr. Kostoff stated that to do otherwise would be unethical. Mr. Kostoff stated that in fairness to Mr. Jones, he is not looking for another job to do, it may be a dilemma and he does not really relish the aspect of challenging this, but it is an obligation that he has. Mr. Jones stated that it is an obligation that Mr. Kostoff presumes he has, and if we take the money away from your position, you won't have any to act on. Mr. Jones stated that if you intend to do this without Councils approval, he would ask tonight that Mr. Kostoff to resign from his position. Mr. Kostoff replied he could appreciate that. Mr. Jones stated that he does not intend to use taxpayer money to fight their vote. Mr. Mowery stated that he was dumbfounded and with all due respect, that he has never heard of a Law Director would take it upon themselves to do what was constitutionally right. Even if Council was wrong in not giving you that right, at least we would have the vote at the very least. Mr. Mowery stated that since we are the governing body in the city to either say yes, go with it, or not. The people put us in charge and if that was the case there would be pandemonium, and people would do what ever they wanted to do. Mr. Mowery stated that over the years the people have seen where their money has gone on legal fees, on misdirection on ballot issues. It has come to a point where push has come to shove, they have hit the wall and they are going to push some people against the wall if it does not come around to the way they wanted things done.

Mr. Pelot asked Mr. Moss where we stand on the Identity Theft Policy, Mr. Moss replied that he has not done anything with this yet. Mr. Pelot suggested placing this on the Matters Referred list just to keep the discussion going to know where we stand. We have it as a second reading and have no policy in place; he wants to make sure we have something in place before we adopt.

Mr. Jones discussed employees contributing to the health care costs, and would like to discuss this at the next meeting. Mr. Jones stated that he knows of many businesses contributing and money is tight and we have got to start saving money. Mr. Ryland indicated that this should not be discussed, it is in violation of the fair negotiations, it is not something that can be discussed in an open meeting. We are in contract negotiations with three (3) unions and this is not negotiating in good faith and not a good idea. Mr. Ryland stated that there are rules to negotiating. Mr. Jones stated that he would not ask this on the floor, he would discuss it with Mr. Ryland personally.

**NEW BUSINESS:**

Mr. Jones thanked Mr. Ryland and the Service Dept. for the road striping along Hametown Road and fixing Clubside.

**PUBLIC SERVICE ANNOUNCEMENTS:**

Mayor Koontz read several announcements, (see attached).

Mr. Pelot announced the Norton Music Boosters would be having Breakfast with Santa on Dec. 6. 2008. Mr. Braman announced that tomorrow is Veterans Day and as usual the Norton

High School students and staff would be honoring Veterans with breakfast in the cafeteria at 8:00 AM and a program in the gym at 9:30. This has always been a great celebration and he was sure this one would be also. All Veterans, please try to attend, you will be treated like royalty. Mr. Jones thanked everyone that supported John Bolender at the spaghetti dinner benefit yesterday. Mr. Jones stated that he saw Mr. Bolender going around in his wheelchair with tears in his eyes. Mr. Bolender stated that his tears were not because he hurt so badly, because he does, it's because of the overwhelming support of the people that were there.

**ADJOURN:**

There being no other business to come before the Regular Council Meeting, the meeting was adjourned at 8:24 PM.

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Scott Pelot, President of Council

I, Karla Richards, CMC-Clerk of Council for the City of Norton, do hereby certify that the foregoing minutes were approved at a Regular Council Meeting held on November 24, 2008.

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Karla Richards, CMC-Clerk of Council

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

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