

REGULAR COUNCIL MEETING
March 2, 2021

The first monthly meeting of Mansfield City Council met on
Tuesday, March 2, 2021 at 8:00 PM in the
Council Chambers of the City Building.

The Pledge of Allegiance was recited by the audience.

Councilman Lawrence led the audience in prayer.

ROLL CALL: The following answered present at roll call: Burns, Meier, Van Harlingen, Davenport, Lawrence, Moton, Scott, Zader, and Falquette .

There being no objections, the reading of the Journal and Correspondence was dispensed with.

PUBLIC COMMENTS:

PRESIDENT FALQUETTE: Are there any public comments at this point? I believe I did see one that came out of Councilman Davenports Ward, and that's the one I saw.

ALOMAR DAVENPORT: Yes, I do have, I believe I have two public comments. So, its... *"Councilman Davenport with City Council, I was surprised to learn that city council members have managed to give themselves retroactive raises. These raises were not supposed to happen until 2022 and would only impact those members who were elected that year. This is disappointing on many levels. First that council would go behind the backs of the community to give themselves raises early without emergency clauses. This is a huge disrespect to the citizens of Mansfield who expect city council members to act in accordance with the legislation that they vote on. Additionally, the Mansfield community has watched as various members of the Mansfield government say there's no money to for improvements in parks, no money to approve snow removal and who cut safety departments in the middle of a pandemic. So, while there never seems to be any money for community improvement, council has managed to find, not just enough money for future raise, but enough to pay raises for the council for the last two years. This is a shame and failure and a slap in the face to the people of Mansfield. Respectfully Sarah Fernandez 119 Lasalle St Mansfield."*

PRESIDENT FALQUETTE: Councilman if I may, Id like to be so bold and take the liberty to maybe clarify what Ms. Fernandez is feeling right now. Because I was there when that vote was taken and I was part of that vote. What she's referring to is bill #19-247. Which was voted on December 17th of 2019, over a year ago. The vote at that time did propose pay increases for the mayor, law director, finance director, president of council and members of council. When the vote was taken of the 8 members, the 3 departing members, in other words the three councilmembers that were not going to be returning in 2020, which was Butch Jefferson, Jeff Rock and Donnie Bryant, all voted no. The remaining voted to pass the legislation. So, it passed 5 to 3. It did pass, the raise did pass but not as an emergency as the legislation pointed out. In order to get the raises for those effective individuals an affirmative vote with two thirds of the members was required. Well 5 to 3 is not two thirds so it didn't pass as an emergency, but it did pass as the majority. And it took us a year with outside legal counsel to interpret the intent of that bill. So it took a year to...for the lawyers to identify that in fact yes these individuals should have gotten the raise and its retroactive because we waited for a legal opinion to make sure we were doing the right thing. So, Ms. Fernandez if your listening I hope that clarifies things for you and make you feel a little bit better about it. That we really didn't go behind anybody's back, that it was public record, it did pass by a majority. But not by two thirds

and that's why it took a while to get an opinion and it took a while for the raises to take effect. So I did want to clarify that. Are there any other comments on that comment that somebody wanted to make?

JOHN SPOHN: Mr. President...Mr. President

PRESIDENT FALQUETTE: Yes, Director Spohn

JOHN SPOHN: I think another important fact is that those public officials that would receive a raise had not received a raise for ten years.

PRESIDENT FALQUETTE: Good point, excellent point. Thank you.

ALOMAR DAVENPORT: President Mears?

PRESIDENT FALQUETTE: Yes?

ALOMAR DAVENPORT: I do have a brief comment. Now of course I was not on council at the time of that vote and I do know that it did pass, as you mentioned, 5 to 3. My concern with what transpired is not in regard to the vote, in regard to whether it passed or not or whether people were supposed to receive raises. My concern is the precedence that it appears was created. Being that we had no knowledge of what this legal opinion was, and I'm just speaking for myself, it kind of feels like the administration has figured out a way to side step an emergency clause. And my concern is future, going forward. *(someone clears their throat)* That was not me, but because I don't quiet, I mean because no one has told me what this legal opinion is, I feel like next year if council votes on an emergency clause and it comes down 5 to 3. Which means it does not go into effect immediately and administration feels that we got the vote wrong, based on this legal opinion, they can come in and make it go into effect immediately. So that's my concern and I'm not sure if this is the form for that question to be answered but that is my concern with what has transpired is the precedence it appears it has been created.

PHIL SCOTT: Mr. President?

PRESIDENT FALQUETTE: Yes, councilman Scott?

PHIL SCOTT: Might I ask that maybe Director Ramey and/or Director Spon clarify as to the difference between legislation passing as an emergency or passing non-emergency. I think that would...I kind of know the difference but I think their legal aspect...

JOHN SPOHN: I can explain that...

PHIL SCOTT: Thank you

JOHN SPOHN: When legislation passes as emergency legislation it means it takes effect immediately on the day that it passed as emergency legislation. If it passes as legislation but not as emergency legislation then it takes effect roughly 30 days after the mayor signs the legislation. So, I think what's important to note here is that the legislation in fact passed. The only remaining question was when does it take effect. And outside legal counsel on a solid basis did the legal research and it was their very strong opinion that the city had the authority to not only pass the legislation but to give effect to it roughly 30 days after the mayor signed the legislation.

PHIL SCOTT: Thank you Director, that was my understanding of the difference but I figured a legal counsel...a legal explanation would be better than mine. Thank you.

PRESIDENT FALQUETTE: I thank you as well Director because I'm glad you pointed out it was outside legal counsel that determined what the right thing to do was here.

ALOMAR DAVENPORT: I fully understand the difference between a non-emergency and emergency clause but my question is, next year if there is a piece of legislation that comes down and it does not pass with an emergency, meaning it does not go into effect immediately, will the administration be able to take the legal opinion that they just received and side step that vote. That's the concern and that's my question. Its not about what's happening now, its about can this legal opinion be used as a precedence to in the future do the same thing.

JOHN SPOHN: If I can answer that again. There was no side stepping. This was all done transparently. It was brought before city council publicly at a regularly scheduled council meeting. The ordinance was explained to council and to the public. And council decided not to pass it as an emergency legislation but passed it never the less as regular legislation. So when your referring to something being side stepped I'm not sure what you mean because there was nothing done that would involve side stepping. What was done was a vote in the orderly course of the law and then the law was applied appropriately.

PRESIDENT FALQUETTE: Thank you Director.

ALOMAR DAVENPORT: And again, that was my question because it hasn't been explained. From my understanding it was passed December 17th, which means that it shouldn't have gone into effect until the middle of January. And initially we were saying that no one would receive a raise until 2022. And...but based on this legal opinion you were able to you know...that's not what happened. So, the people who were elected in 2020 actually got a raise. So...so...and again that's where my question is. In the future will this legal opinion be able to be used if a vote is...if a piece of legislation is voted on non-emergency and then you can use this to make it an emergency. That's the question.

JOHN SPOHN: Yes, it's still applicable law, the law hasn't changed. This was based upon law decided several years ago in a separate court of law. It was applicable to the 5th district court of appeals. Which is our Appellate District and the losing party tried to appeal it to the supreme court of Ohio but the supreme court of Ohio declined to hear it. Which temperantial means the supreme court of Ohio agreed with the lower courts. So, your question whether or not it applies in the future, it applied in the past for several years, it applied now and then until the laws changed it would continue to apply in the future.

PRESIDENT FALQUETTE: Thank you Director. I think that's a very clear explanation. Councilman Davenport I hope that clarifies things for you. And now Id would like to move on. I think we've got as much of an explanation on that as we can possibly get. Are there any other public comments that have come through from constituents? Ok hearing none, are there any committee reports from council? Ok, moving on would the Mayor Theaker like to address council?

MAYOR THEAKER: No Mr. President I have nothing.

PRESIDENT FALQUETTE: Thank you. Safety Service Director Cope anything for us? Director Cope I think your muted right now. Are you there Director Cope? Ok I think we'll need to move on. Public Works Director Ramey anything for council?

DAVE RAMEY: No, no nothing sir. I occupied enough of your time during caucus.

PRESIDENT FALQUETTE: For good cause, thank you. Law Director Spon anything else for council.

JOHN SPOHN: No, I do not.

PRESIDENT FALQUETTE: Ok thank you very much.

END OF DISCUSSION

PRESIDENT FALQUETTE: We'll now proceed with legislation. I'll now call on Councilwoman Burns.

SUSPEND RULES

LAURA BURNS: Thank you I move with respect to all bills that come before council this evening that the rule requiring reading on three different days be suspended and that each bill be read one time by title only, seconded by Mr. Falquette. The vote was taken and resulted as follows: Ayes: 8, Nays: 0

PRESIDENT FALQUETTE: Ok we have a motion and a second. Are we prepared for a vote James and Amy?

JAMES WEINER: Yes sir.

PRESIDENT FALQUETTE: Ok wonderful, I'll call for the vote for the suspension of rule. And measure passes 8 to 0. Thank you very much, that worked great ok. We will move in to legislation now. The first bill for council is bill #21-017. Councilwoman Burns and Councilman Scott.

PHIL SCOTT: Thank you Mr. President I move that bill 21-017 be read and placed up on the floor for discussion.

STEPHANIE ZADER: Second.

PRESIDENT FALQUETTE: The clerk will now read bill 21-017.

AMY YOCKEY: Amending Chapter 109 of the Codified Ordinances of 1997, as amended, to enact Section 109.07 thereof to authorize the City Engineer to establish contract retainage terms for construction of public improvements."

AMENDING SECTION 137.05 OF CHAPTER 137

BY: MR. LAWRENCE

BILL #21-017*

ORDINANCE #21-019

Amending Chapter 109 of the Codified Ordinances of 1997, as amended, to enact Section 109.07 thereof to authorize the City Engineer to establish contract retainage terms for construction of public improvements."

Upon motion by Mr. Lawrence, that Bill 21-017 be read and placed upon the floor for final consideration, seconded by Mr. Falquette. The bill was placed upon the floor for final passage, seconded by Mr. Falquette. The vote was taken and resulted as follows: Ayes: 8, Nays: 0

The bill was declared passed, signed by the President, approved by the Mayor and attested by the Clerk.

PRESIDENT FALQUETTE: Is there any discussion on this? Ok hearing none, again Councilwoman Burns and Councilman Scott.

DISCUSSION: NONE

PHIL SCOTT: Thank you Mr. President I move bill 21-017 be placed upon the floor for final consideration.

STEPHANIE ZADER: Second.

PRESIDENT FALQUETTE: Council now cast their vote for passage of bill 21-017. Oh sweet that was quick. The measure passes 8 to 0. Excellent.

END OF DISCUSSION

PRESIDENT FALQUETTE: The next bill is 21-041, Councilman Davenport.

ALOMAR DAVENPORT: Thank you Mr. President. I move that bill 21-041 be read and placed upon the floor for discussion.

STEPHANIE ZADER: Second.

PRESIDENT FALQUETTE: The clerk will now read bill 21-041.

AMY YOCKEY: Adopting personnel positions, pay grades and salaries for certain employees of the City of Mansfield 2021 payroll year, and declaring an emergency.

FIRST PAYMENT ON THE AMBULANCE LEASE/PURCHASE AGREEMENT

BY: MISS. MOTON

BILL #21-041

ORDINANCE # 21-041

Adopting personnel positions, pay grades and salaries for certain employees of the City of Mansfield 2021 payroll year, and declaring an emergency.

Upon motion by Ms. Moton, that Bill 21-041 be read and placed upon the floor for discussion, seconded by Mr. Falquette. The bill was placed upon the floor for final passage, seconded by Mr. Falquette. The vote was taken and resulted as follows: Ayes: 8, Nays: 0

The bill was declared passed, signed by the President, approved by the Mayor and attested by the Clerk.

PRESIDENT FALQUETTE: Is there any discussion? Ok hearing none, Councilman Lawrence.

DISCUSSION: NONE

PHIL SCOTT: Thank you Mr. President I move bill 21-041 be placed upon the floor for final consideration.

STEPHANIE ZADER: Second.

PRESIDENT FALQUETTE: Ok I will now make a call for the voice vote on bill 21-041. Measure passes 8-0.

END OF DISCUSSION

PRESIDENT FALQUETTE: The next bill is 21-042, Councilman Davenport.

ALOMAR DAVENPORT: Thank you Mr. President. I move that bill 21-042 be read and placed upon the floor for discussion.

STEPHANIE ZADER: Second.

PRESIDENT FALQUETTE: The clerk will now read bill 21-042.

AMY YOCKEY: Urging Governor DeWine and the Ohio Department of Public Health to include Law Enforcement Officers in Phase 1B regarding the distribution of COVID-19 vaccines and to increase the amount of vaccine sent to Mansfield to accomplish this request.

FUNDING OF THE DIAMOND STREET TWO-WAY CONVERSION PROJECT

BY: MR. SCOTT/MR. VAN HARLINGEN

BILL #21-042

ORDINANCE # 21-042

Urging Governor DeWine and the Ohio Department of Public Health to include Law Enforcement Officers in Phase 1B regarding the distribution of COVID-19 vaccines and to increase the amount of vaccine sent to Mansfield to accomplish this request.

Upon motion by Mr. Scott/Mr. Van Harlingen, that Bill 21-042 be read and placed upon the floor for discussion, seconded by Mr. Falquette. The bill was placed upon the floor for final passage, seconded by Mr. Falquette. The vote was taken and resulted as follows: Ayes: 8, Nays: 0

The bill was declared passed, signed by the President, approved by the Mayor and attested by the Clerk.

PRESIDENT FALQUETTE: Is there any discussion? Ok hearing none, Councilman Scott.

DISCUSSION: NONE

PHIL SCOTT: Thank you Mr. President I move bill 21-042 be placed upon the floor for final consideration.

CHERYL MEIER: Second.

PRESIDENT FALQUETTE: Ok I will now make a call for the voice vote on bill 21-042. Measure passes 8-0.

CLOSING COMMENTS:

PRESIDENT FALQUETTE: I believe the last three remaining items are caucus only and none of those were brought forward for vote this evening. If there are no corrections for that I have no further legislation. Could I have a motion for adjournment?

STEPHANIE ZADER: So move.

PHIL SCOTT: Second.

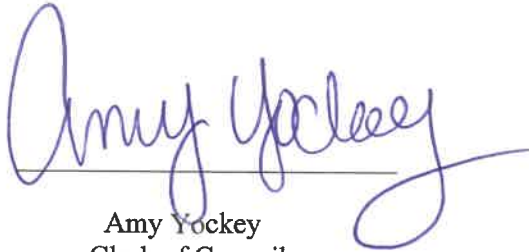
PRESIDENT FALQUETTE: We have a second. All in favor?

COUNCIL MEMBERS: I

PRESIDENT FALQUETTE: Meeting is adjourned at 8:04 PM. Thank you everyone.

PHIL SCOTT: Have a good week.

ADJOURN: Upon motion by Mr. Falquette, seconded by Mr. Scott, and passed by voice vote, the meeting was adjourned.



Amy Yockey
Clerk of Council



David Falquette
President