

Council met in a **REGULAR MEETING**. The President of Council called the meeting to order at 7:00 p.m., the Ward 4 Councilor offered the opening prayer, and the Pledge of Allegiance was cited.

**Members Present:** Mr. August A. Pugliese (Ward 2)  
Mrs. Julie A. Lattimer (Ward 4)  
Mr. Richard F. Balog (Ward 1)  
Mrs. Ann I. Stranman (Ward 3)  
Mr. Christopher J. McClure (Vice President)  
Mr. J.P. Ducro IV (President)

**Member(s) Absent:** Mr. James M. Trisket (Ward 5)

**Officer(s) Present:** City Manager James M. Timonere, City Solicitor Michael Franklin  
City Auditor Dana D. Pinkert, Deputy City Auditor Karen S. Jury

**Officer(s) Absent:** Clerk of Council LaVette E. Hennigan

**Excused Absence:** Mrs. Lattimer moved, Mrs. Stranman seconded to excuse the Ward 5 Councilor and the Clerk of Council from the meeting; motion CARRIED.

The President thanked the Deputy City Auditor for sitting in for the Clerk of Council during her attendance at the International Institute of Municipal Clerk's Conference out of town. He thanked the Clerk for representing the City of Ashtabula at the conference.

**SUNSHINE LAW:** The Deputy City Auditor certified conformity to the Sunshine Law.

**READING AND DISPOSAL OF MEETING MINUTES - None**

**Executive Session:** The City Solicitor requested an Executive Session for the purpose of discussing Pending Litigation; and reported the President would like to convene the session at the beginning of the meeting. Mrs. Lattimer moved, Mr. McClure seconded the Solicitor's request to convene an Executive Session for the purpose of discussing Pending Litigation. On the roll call to convene the Executive Session: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED. The President invited the public to remain, and announced business may or may not be required to be taken as a result of the session.

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**Reconvene Public Portion of Meeting:** The President announced Council reconvened into the public portion of the meeting, and that this evening's legislation agenda be amended to include ORDINANCE NO. 2012-92, AN ORDINANCE AUTHORIZING THE PAYMENT OF AN AMOUNT NOT TO EXCEED \$100,000.00 THEREBY SETTling CERTAIN LITIGATION. Mrs. Lattimer moved, Mr. Pugliese seconded the President's request; motion CARRIED.

## **CITY MANAGER'S REPORT**

### **2012 Street Resurfacing Project**

The City Manager requested an ordinance to enter into an agreement with Ronyak Brothers, of Burton, OH for the purpose of providing the services of street resurfacing for the bid dated May 16, 2012, as best and low bidder, in the amount not to exceed \$202,787.35. Funding for this expenditure will be taken from Account Number 412-200-5554, entitled Street Improvements. Mrs. Lattimer moved, Mrs. Stranman seconded to grant the Manager's request. The City Manager announced that because bids came in about \$130,000 below the original estimate, a couple extra streets will be given to the bidder to be priced to see if they may be added to the paving program. The initial paving budget was set at \$333,000. The motion CARRIED.

### **2012 Group Health Insurance**

The City Manager requested an ordinance to enter into an agreement with Anthem Blue Cross, Blue Shield for the purpose of providing Preferred Provider Organization (PPO) for the City of Ashtabula. Funding for this shall be taken from Account Number 602-140-5420, entitled Health Insurances. Mrs. Lattimer moved, Mrs. Stranman seconded to grant the Manager's request. The Manager reported this is a renewal agreement. The bids started out very, very high compared to this year's cost, and were ultimately was lowered to three to four percent over what is being paid this year. Being self funded, the more good health is stressed with employees, the lower the costs will be. His goal is to establish a healthy employee plan to attempt to keep health insurance costs down. The Solicitor announced the Fire and Police union contracts have been completed. The tentative health insurance agreement was achieved during a joint negotiating session with all three unions. AFSCME Local 1197 has not ratified the last portion of their agreement; therefore a formal contract with them does not exist. Ratification of the contract, with the same health care provision is expected, but is ultimately up to the union membership. The City is on a contract extension with AFSCME through the end of this month (the contract expired April 30). If an agreement is not reached by then, essentially "we're going forward without a contract". He said is pleased to see this request because it is essentially the same coverage as was in place before the contract expired; therefore there is no change. While we might end up working without a contract, the City will still provide the same health insurance coverage as before; and will proceed to fact-finding and mediation if necessary. The President announced ratification by the union and Council is required before going forward. The motion CARRIED.

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The City Manager requested an ordinance to enter into an agreement with Anthem Blue Cross, Blue Shield for the purpose of providing Health Savings Account (HSA), Dental, and Vision for the City of Ashtabula. Funds for this shall be taken from Account Number 602-140-5420, entitled Health Insurances. Mrs. Lattimer moved, Mrs. Stranman seconded to grant the Manager's request; motion CARRIED.

The City Manager requested an ordinance to enter into an agreement with VSP for the purpose of providing VSP for the City of Ashtabula. Funds for this shall be taken from Account Number 602-140-5420, entitled Health Insurances. Mrs. Lattimer moved, Mrs. Stranman seconded to grant the Manager's request. VSP is a vision organization which services some of the smaller local persons in the area. The motion CARRIED.

### **Trash Pickup & Spring Cleanup**

The City Manager reported trash pickup service will be delayed one day next week due to the Memorial Day holiday. Sanitation crews will work on Saturday of that week. The Transfer Station will also be open on Saturday, June 2, from 8:00 a.m. until 2:00 p.m., in order to allow residents to dispose of belongings. There will be a charge due to landfill costs and in order to remain in EPA compliant.

### **QUESTIONS AND/OR COMMENTS FOR THE MANAGER**

**Transfer Station Drop-off Rates:** The Manager announced the minimum rate is \$12.00, and that weight will be a factor.

**Storm Drains:** A member of Council asked the Manager to remind citizens that it is illegal to blow grass clippings into the street. The Manager said he witnessed a street sweeper removing debris, and then a resident blowing grass into the street immediately thereafter.

**Raccoons/High Grass/Snakes:** The Ward 2 Councilor reported receiving calls that raccoons were entering and exiting an East 16<sup>th</sup> Street vacant structure. He received another high grass call which included snakes. He reported there to be a property by the YMCA whose grass is at least four feet tall. The Councilor provided the Manager with a list of information.

**High Grass:** The Manager reported an inordinate amount of high grass violation calls are coming in. All violation notices have been issued; however staff is short. The Manager recalled that at the last meeting he reported 77 or 78 citations were issued and 27 or 28 of those lawns were mowed. He said it takes time to follow the guidelines; one employee trying to handle the mowing; and one code enforcer. Having said this he encouraged the community to continue to call violations into his office. The Manager reported the high grass violation notice is published once at the beginning of the year; the owner is notified once; and that a second complaint does not warrant a letter, just a mow.

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The rate for the City to mow private high grass violations is \$150/hr plus \$250 administration fee. The second violation cost \$150/hr plus a \$500 administration fee. The Ward 4 Councilor asked what the fine is for blowing grass into storm drains. The Manager could not say right off.

**Tree on East 48<sup>th</sup> Street House:** The Ward 3 Councilor asked the Manager if he had a chance to check on the tree which is leaning on the back of a West 48<sup>th</sup> Street house. The Councilor said garbage and rodents are also a problem. The Manager said the complaint was given to the Code Enforcer, but was not sure if he had a chance to address it.

**Demolition Funding:** The Ward 2 Councilor asked if the City will receive some of the ninety-five million dollars in funding for foreclosure demolitions. The Manager reported the Planning & Community Development Department is in contact with them; that the County is going to be the fund “go to” entity, and the one that will divide up the funds. The City is way ahead of the process because so many homes were on our Neighborhood Stabilization Program roster; many have been inspected for asbestos; many of the reports are back; and “quite a list” will be provided to the County to determine how much we will be awarded.

**High Grass Violation Notification:** The President reiterated that the City’s limited staffing begs for the public’s assistance in determining where violations exist; and provided the Manager with a list of 8 properties in violation. The President encouraged residents living next to high grass to consider mowing the violation just to try and keep up the appearance of the neighborhood.

**CITY SOLICITOR’S REPORT - None**

**QUESTIONS AND/OR COMMENTS FOR THE CITY SOLICITOR - None**

**CITY AUDITOR’S REPORT**

The Auditor reported that with the exception of some unforeseen expenses, the budget is on track. The Tax Budget will be presented at the first meeting in July.

**QUESTIONS AND/OR COMMENTS FOR THE CITY AUDITOR - None**

**CITY COUNCIL COMMITTEE REPORT**

**Community / Economic Development / Parks & Recreation (Mrs. Stranman/Mr. McClure):**

**Mural:** The Chair reported she, the Manager, and one member of the public attended the Parks & Recreation Board (Board) Public Hearing regarding the Smith Field mural. The member of the public while not against the mural, suggested that in the future student contests be conducted with the winner's submission turned into a mural.

**ADDA:** The Chair reported attending the Friday, May 11, ADDA meeting, which was a great meeting. A few of their members attended the Heritage Ohio conference, and shared what they learned, including USDA funding. The Chair gave the information to the City Manager and the Director of Planning and Community Development. The City of Ashtabula may be eligible for some funding, which we previously were ineligible for, because the 2010 U.S. Census reports our population at less than 20,000.

**Beatitude House:** The new facility for homeless women with children will host their ribbon cutting on Friday, June 1, at 2:30 p.m.; open house from 3:00 p.m. to 5:00 p.m. the same day, and Sunday, June 3, from 11:00 a.m. to 2:00 p.m.

**Chestnut Neighborhood Community Garden:** St. Peter's Episcopal Church, Imagine Ashtabula, Community Action, and Catholic Charities are working on a community garden for the Chestnut neighborhood. A meeting regarding the project is scheduled at St. Peter's on Thursday, May 24, at 7:00 p.m. She gave kudos to the agencies for working together to improve the Chestnut neighborhood – noting this is something not seen too often.

**Lake Erie Dog Park Association (Park located at Smith Field):** The Association will have a clean/fix up day on Sunday, June 3, from 9:00 a.m., with a rain date of Sunday, June 10, to ready the park for the grand opening on Sunday, June 24. Volunteers are welcome.

**Lift Bridge Community Association (LBCA):** The blessing of the Bascule Bridge and unveiling of the historical plaques is scheduled for Saturday, May 26, at 9:00 a.m.

**Meeting:** This Committee's next meeting is scheduled for Wednesday, June 6, at 6:00 p.m.; however, is subject to change.

**Ward Walks:** The Chair reported the walks went well, and Ward 3 had the most participants. Councilor's Balog, Pugliese, Ducro, Stranman, and Lattimer's husband participated. The President announced there were over 100 participants. He said while stationed at the Greenway Trails about twelve out-of-town visitors expressed their enjoyment of coming in town and regularly using the trails.

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**Garden Club:** The Ward 4 Councilor that at this evening's Pre-Council meeting Garden Club announced they are establishing a "Garden of the Month" award for June, July, and August. Floral gardens will be the focus. Applications/nominating forms may be obtained at the Ashtabula Area Chamber of Commerce or the Ashtabula City Municipal Building. Winners will have a "Garden of the Month" sign placed in their yard, receive a \$50 gift card, and have their photo placed in the newspaper with a press release. The Club's September flower show will be at the Elks Club, is free to the public, and their community garden is located at West 13<sup>th</sup> Street and Lake Avenue.

**Finance and Personnel - (Mr. Ducro, IV/Mrs. Lattimer):** The Chair reported on the Committee's May 11 meeting, as follows:

**Finances:** The Committee discussed the state of the finances. The Auditor's report this evening suffices.

**EMS Fire Department Billing:** The billing is behind, but the department is catching up.

**Auditor's Department Part-time Position:** The department's part-time employee successfully bid on a full-time position; therefore the job opening was posted to fill the vacancy.

**Income Tax Appropriation:** An appropriation was requested and will be presented to the full Council during the legislation request portion below.

**Sewer Rates:** Future sewer rate projections were discussed.

#### **Legislation Requests**

Mr. Ducro moved, Mrs. Lattimer seconded to formally request ORDINANCE NO. 2012-86, AN ORDINANCE REPEALING, IN ITS ENTIRETY, PAYROLL ORDINANCE NO. 2012-65, PASSED ON APRIL 16, 2012, FOR THE PURPOSE OF AUTHORIZING COMPENSATION TO THE POLICE AND FIRE DIVISIONS AS SET FORTH IN COLLECTIVE BARGAINING AGREEMENTS EFFECTIVE MAY 1, 2012; motion CARRIED.

Mr. Ducro moved, Mrs. Lattimer seconded to formally request ORDINANCE NO. 2012-87, AN ORDINANCE AUTHORIZING COMPENSATION, SALARIES AND WAGES TO ALL EMPLOYEES OF THE CITY OF ASHTABULA, OHIO, (with the new rates); motion CARRIED.

Mr. Ducro moved, Mrs. Lattimer seconded to formally request ORDINANCE NO. 2012-90, AN ORDINANCE APPROPRIATING FROM UNAPPROPRIATED PERMANENT IMPROVEMENT FUND 412 THE AMOUNT OF \$27,000 TO ACCOUNT NO. 412-139-5460, ENTITLED INCOME TAX REFUNDS.

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The President reported 90% of income revenue goes to the General Fund; 10% to Permanent Improvement. However, when income tax refunds are issued 100% of the refund is issued from the General Fund. This ordinance shifts 10% of the 2012 income tax revenue to the Permanent Improvement Fund to be used for income tax refund payments. The motion CARRIED.

Mr. Ducro moved, Mrs. Lattimer seconded to formally request ORDINANCE NO. 2012-91, AN ORDINANCE APPROPRIATING FROM UNAPPROPRIATED GENERAL FUND 101 THE AMOUNT OF \$50,000 TO ACCOUNT NO. 101-140-5817 ENTITLED SETTLEMENT OF CLAIMS; motion CARRIED.

**Public Works / Utilities / Schools – (Mr. August Pugliese/Mrs. Lattimer):** The Chair reported on the Committee’s May 8 meeting as follows:

**2012 Paving Program:** Bids were let to pave the following roads: Nathan Avenue (West 58<sup>th</sup> to West 55<sup>th</sup> Streets); West 14<sup>th</sup> Street (Lake Avenue to Ohio Avenue); Great Lakes Avenue (Lake Avenue to ARU property); West 29<sup>th</sup> Street (Griswold Road to Ohio Avenue); and Griswold Road (West Avenue to where the curb ends). If additional funding remains Saybula Drive and Westshore Drive could be added. He is satisfied with this year’s bid.

**Commercial Haulers Contracts:** Waste Management paid \$500 per truck, for five trucks, to do business inside the City.

**Truck Lease:** Public Services Superintendent (PSS) Dominic Iarocci presented a request to lease-to-own three trucks, through State Purchasing. The lease would be for 5 years, at a cost of \$153,000 per truck. The yearly lease payment would be \$30,000, and at the end of the 5 year period the City will own the vehicles.

**Radio Needs:** The PSS reported 42 radios need to be replaced, at a cost of \$20,000 to \$24,000.

**Sanitation/Transfer Station Open Saturday after Memorial Day:** The PSS told the Committee garbage pickup will take place the Saturday after Memorial Day; that the Transfer Station will be open; and that there will be a charge for dumping.

**Bands-on-Beach:** The first concert is scheduled for Sunday, June 24, at 4:00 p.m.

**City Recreation Softball League:** The Manager told the Committee he asked the Y.M.C.A. if they could become the City’s Recreation Director. If they agree to do so they would operate the League on behalf of the City, beginning in 2013. The City would be compensated for maintaining the field.

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The League uses Columbus Avenue and Massucci Fields, and hard ball is played at Smith Field. Each team would pay \$550.00 to play in the League, and the funds would be used to pay umpires. Today the Manager told Council the conversation is preliminary and that the YMCA expressed a desire to be more visible in the community.

**Cable Television Converter Boxes:** The Chair reported a Pittsburgh, PA company circulated information to City residents advertising access to 153 shows. Each television set would require a box to access the channels, at a cost of \$48.00 per box. If the television is more than 5 years old a box different than the one used for flat screens will be needed. This is a onetime deal. The reception radius is 60 miles; however it is unsure if Cleveland or Erie stations could be picked up. He said the company is legitimate, and an antenna or wire would have to be placed on a window in the home.

#### **Legislation Request**

Mr. Pugliese moved, Mrs. Stranman seconded to formally request ORDINANCE NO. 2012-89, AN ORDINANCE AUTHORIZING THE ASHTABULA CITY PORT AUTHORITY TO ACT ON BEHALF OF THE CITY OF ASHTABULA IN CONNECTION WITH AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE CITY OF ASHTABULA FOR LOCAL COOPERATION AT ASHTABULA HARBOR, OHIO, AND ANY AMENDMENTS THERETO. The Solicitor reported, dredging activities are proposed for this summer. It is not environmental dredging as was the case with the first dredging project. It is not designed to clean up, but rather open up some areas for safe navigation. One area is north of the Bascule Lift Bridge, going out towards the mouth of the Ashtabula River (bordered on one side by the coal dock and on the other side by property formerly owned by Norfolk/Southern Railroad, but now owned by Kinder-Morgan). The other portion is further upstream south of the area we know as the turning basin. Basically it's the portion of the Ashtabula River between Jack's Marine and Brockway Marine. In order to do this with as little bureaucratic delay as possible, the Corps of Engineers (COE) is working off of an old 1977 agreement between the City of Ashtabula and the COE for improvement of the Harbor. They are proposing the City amend the agreement to take into account the additional dredging to shave months off the bureaucratic process. The Ashtabula City Port Authority is the lead agency that has been working on this for some time. The COE asked if the City would agree to allow the dredging to proceed under the old 1977 agreement, and assign the cooperation role to the City Port Authority. The agreement is non-monetary; involves granting, if necessary, easements over public property so that the crews can reach barges; the barges can be loaded and unloaded; equipment may be transferred. This is unlike the dredging recently done. It is going to be traditional clam-shell dipping and putting onto a barge; the barge will go to Kinder-Morgan for off-loading and allowed to dewater; some of the dredgings have been sampled and open lake disposed; the balance of the dredgings will be going into a landfill proposed for two of the open settling ponds on the former Elkem site.



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The company which took over the site and the EPA wants the ponds closed; the COE wants to get rid of the dredgings (which are not toxic, but have enough materials in them that they should not be deposited of in the open lake), so it is a win/win situation. The City would permit the Ashtabula City Port Authority to act on our behalf in any local cooperation is needed to make this dredging happen. The motion CARRIED.

**Safety Forces – (Mr. Balog/Mr. Trisket):** The Chair announced the May meeting was cancelled; and the Committee is scheduled to meet Friday, June 8, at 8:00 a.m. He encouraged the attendance of those interested in being a part of the vicious dog/pit bull conversation. Outdoor wood furnaces and meth lab clean ups will also be discussed.

#### **Questions/Comments for Committee**

**Next Meeting:** The Ward 3 Councilor asked if Doc Irene Fiala was aware of the meeting. The Chair reported the Clerk of Council is taking care of the invites; and as of today he knows he will be in attendance.

#### **Work Session– (Mr. Ducro IV, Chair) – No Session/No Report**

**Special Meeting:** The President announced Council will meet in a Special Meeting on Wednesday, May 30, at 5:00 p.m., to review the AFSCME Local 1197 contract.

#### **FORMAL LEGISLATION REQUEST**

Mr. Ducro moved, Mrs. Lattimer seconded to formally request ORDINANCE NO. 2012-92, AN ORDINANCE AUTHORIZING THE PAYMENT OF AN AMOUNT NOT TO EXCEED \$100,000 THEREBY SETTling CERTAIN LITIGATION; motion CARRIED. (It was noted that this ordinance was added to the agenda when the public portion of the meeting convened at this evening’s executive session.)

#### **PUBLIC (LEGISLATION) PORTION - None**

#### **LEGISLATION READING**

**ORDINANCE NO. 2012-73 AN ORDINANCE AMENDING THE TRAFFIC MAP TO PLACE A CHILD-AT-PLAY SIGN ON WEST 55<sup>TH</sup> STREET AT MAIN AVENUE,** was presented for its second reading. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the reading of the ordinance; motion CARRIED. The Ward 4 Councilor asked if the exact area in which the sign is to be placed was obtained. The President spoke with the requestor, who said she requested the said read “Blind Child at Play”. Mr. Ducro moved, Mrs. Lattimer seconded to have “Blind” added to the ordinance by way of interlineation.

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The Ward 2 Councilor asked if two readings are again required due to the change. The Solicitor said it is not required by law, but rather a precedent set by Council, and that it is their call. The motion CARRIED. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the Charter requirement of two readings, as it relates to the interlineation. On the roll call to waive the Charter requirement of two readings: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED. On the roll call to adopt the ordinance: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED.

**ORDINANCE NO. 2012-74 AN ORDINANCE AMENDING THE TRAFFIC MAP TO PLACE ARROWS AND SIGNS FOR TRUCK TRAFFIC AT THE INTERSECTION OF WEST AVENUE & GRISWOLD ROAD**, was presented for its second reading. Mrs. Lattimer moved, Mrs. Stranman seconded to adopt the ordinance. On the roll call to adopt the ordinance: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED.

**ORDINANCE NO. 2012-86 AN ORDINANCE REPEALING, IN ITS ENTIRETY, PAYROLL ORDINANCE NO. 2012-65, PASSED ON APRIL 16, 2012, FOR THE PURPOSE OF AUTHORIZING COMPENSATION TO THE POLICE AND FIRE DIVISIONS AS SET FORTH IN COLLECTIVE BARGAINING AGREEMENTS EFFECTIVE MAY 1, 2012**, was presented. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the reading of the ordinance; motion CARRIED. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the Charter requirement of two readings. On the roll call to waive the Charter requirement of two readings: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED. On the roll call to adopt the ordinance: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED.

**ORDINANCE NO. 2012-87 AN ORDINANCE AUTHORIZING COMPENSATION, SALARIES AND WAGES TO ALL EMPLOYEES OF THE CITY OF ASHTABULA, OHIO**, with the new pay rates, was presented. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the reading of the ordinance; motion CARRIED. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the Charter requirement of two readings. On the roll call to waive the Charter requirement of two readings: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED. On the roll call to adopt the ordinance: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED.

**RESOLUTION NO. 2012-88 A RESOLUTION AUTHORIZING THE CITY MANAGER TO PREPARE AND FILE AN APPLICATION FOR THE STATE/HUD COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FISCAL YEAR 2012 FORMULA ALLOCATION PROGRAM**, was presented. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the reading of the resolution; motion CARRIED.

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Mrs. Lattimer moved, Mrs. Stranman seconded the adoption of the resolution. On the roll call to adopt the resolution: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED.

**ORDINANCE NO. 2012-89 AN ORDINANCE AUTHORIZING THE ASHTABULA CITY PORT AUTHORITY TO ACT ON BEHALF OF THE CITY OF ASHTABULA IN CONNECTION WITH AN AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE CITY OF ASHTABULA FOR LOCAL COOPERATION AT ASHTABULA HARBOR, OHIO, AND ANY AMENDMENTS THERETO**, was presented. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the reading of the ordinance; motion CARRIED. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the Charter requirement of two readings. On the roll call to waive the Charter requirement of two readings: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED. On the roll call to adopt the ordinance: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED.

**ORDINANCE NO. 2012-90 AN ORDINANCE APPROPRIATING FROM UNAPPROPRIATED PERMANENT IMPROVEMENT FUND 412 THE AMOUNT OF \$27,000 TO ACCOUNT NO. 412-139-5460, ENTITLED INCOME TAX REFUNDS**, was presented. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the reading of the ordinance; motion CARRIED. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the Charter requirement of two readings. On the roll call to waive the Charter requirement of two readings: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED. On the roll call to adopt the ordinance: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED.

**ORDINANCE NO. 2012-91 AN ORDINANCE APPROPRIATING FROM UNAPPROPRIATED GENERAL FUND 101 THE AMOUNT OF \$50,000 TO ACCOUNT NO. 101-140-5817 ENTITLED SETTLEMENT OF CLAIMS**, was presented. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the reading of the ordinance; motion CARRIED. Mrs. Lattimer moved, Mrs. Stranman seconded to waive the Charter requirement of two readings. On the roll call to waive the Charter requirement of two readings: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED. On the roll call to adopt the ordinance: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED.

**ORDINANCE NO. 2012-92 AN ORDINANCE AUTHORIZING THE PAYMENT OF AN AMOUNT NOT TO EXCEED \$100,000 THEREBY SETTLING CERTAIN LITIGATION**, was read by the President, as follows:

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**WHEREAS**, the daily operations of the City Manager's Department requires the enactment of this ordinance; and

**WHEREAS**, several present and former members of the City Police Division K-9 Unit, to-wit: Patrolman Thomas Perry, former Lieutenant John Koski, Detective William Felt, Jr. and Patrolman Adam Simons, without prior notice or request for payment, have filed litigation against the City under the Fair Labor Standards Act, unilaterally rescinding contracts each had signed in connection with his voluntary K-9 activities and demanding back pay for overtime allegedly spent caring for their animals, liquidated damages and attorney's fees; and,

**WHEREAS**, the aforesaid litigation was filed as Case No. 1:11-CV-01777 and as Case No. 1:12-CV-00053 in the United States District Court for the Northern District of Ohio; and,

**WHEREAS**, a tentative settlement was achieved through mediation, which settlement was received and reviewed by Council on May 21, 2012;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Ashtabula, Ohio:

**SECTION 1.** That the City Manager be and is hereby authorized to settle the pending claims of the foregoing members and former member of the Police Division K-9 Unit in the aforesaid cases for the total amount of 100,000 in settlement of all claims for back pay, liquidated damages and attorney's fees, payable in two (2) installments, to-wit: \$50,000 on or before May 31, 2012, and \$50,000 on or before January 31, 2013.

**SECTION 2.** It is hereby found and determined that all formal actions of this Council concerning and related to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its Committees that resulted in such formal action were in meetings open to the public in compliance with the requirements of Section 10 of the Municipal Charter of the City of Ashtabula, Ohio, and of R. C. Section 121.22.

**SECTION 3.** For the reasons stated in the preamble, this ordinance, if approved by the votes of five (5) or more members of Council, shall take effect immediately, otherwise 30 days thereafter.

Mrs. Lattimer moved, Mrs. Stranman seconded to waive the Charter requirement of two readings. The Ward 3 Councilor asked if the Solicitor could detail this legislation for the benefit of the public. The Solicitor stated, "The Federal Fair Labor Standards Act does not require any proof of fault or deliberate violation on the part of an employer. What it says, essentially, is that if an employer suffers or permits an employee, in part, to perform work outside of the regular 40 hour week that the employer is liable for back pay at a premium rate, not less than time and a half. That is the time specified in our union contracts too – time and a half, in this particular case. It goes on that even though no showing of deliberate intent or willful misconduct is required; nonetheless when an employee takes it upon himself to sue under the Fair Labor Standards Act, if he prevails he gets his back pay. He also gets what are called liquidated damages, which is an equal amount. So if he gets back pay of \$1000 he gets liquidated damages of \$1,000, as well. And the employer gets to pay his attorney's fees.

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So, while no showing of fault is required, it's a very punitive statute from the point of view of an employer. In this case we had a number of K-9 officers (former and present K-9 officers), who without any prior notice to the City or to their supervision, as far as I'm aware, filed what's called a first notice lawsuit. The lawsuit alleged substantial losses due to back pay not having been paid because of the allegation that the officers spend many hours working with and caring for their animals for which they were not compensated. And, the lawsuit asked for an award of this back pay, liquidated damages, and attorney's fees. In our particular case, the K-9 Officer Program was a completely voluntarily program. You had to ask to join the K-9 Program. As part of joining the K-9 Program, you were (once it was approved), you were given a stipend of \$1,000 per year, per contract, to cover presumably the time you spent caring for the dog. In addition the City arranged for donated food, paid for all the veterinary bills, provided all needed equipment. Training was primarily on duty time (we paid primarily for training). We also made arrangements, in many cases, for boarding of the animal when the officer was on vacation, at no cost to the officer. So, we were certainly not aware of any disgruntlement or any dissatisfaction with the K-9 Program. It seemed to be working well for the City; and it seemed to be working well for the officers. Nonetheless, this group of officers filed this suit; we responded. We hired an attorney because this is a very specialized area of the law. We attended two day-long mediation sessions in Cleveland, which achieved the tentative resolution that is being presented to Council at this time. The officers involved have all agreed to this; they agreed to it in open court. I was permitted to attend that last hearing by telephone and the magistrate judge asked me to confirm that I would recommend this settlement to Council, unequivocally and unconditionally – and I do recommend it. While it may be perceived that the law in this particular case is being applied unfairly to the City of Ashtabula, I must tell you that the cases in this area, according to our verdict research, are all over the place. I'm aware of a case involving a former police sergeant who was awarded well over \$200,000 himself in back pay in terms of fees and liquidated damages. Our attorney gave us an assessment which indicated that this settlement was at the low end of what could happen if we took this to trial and were unsuccessful on some of our defenses. Additionally, and this becomes very important, when you have a cash crunch, as the City does, we have to pay our attorneys all along; every step of the way. And while we negotiated a very reasonable rate from this attorney, nonetheless, the bills were mounting. I believe they're closed to \$25,000, if not over that at this time. So, I do unequivocally recommend that you adopt this settlement. Not because it is fair, but because it is the most economical course of action for the City; it cuts off the lawsuit now. We have a concrete amount that we have to pay. We obtained payment terms which allows us to pay half this year and half next year. And, just as importantly, we cut off our own liability for our own attorney's fees right now. I'm willing to answer any further questions that might come up."

The Vice President stated that the settlement of this lawsuit does not constitute us receiving the K-9 Program back; that's separate from the lawsuit; that program has been disbanded.

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The Solicitor confirmed the Vice President's statement to be true. He said, "Because of a concern of an overtime liability going forward, the Manager made the decision some months ago to terminate the K-9 Program."

The Ward 4 Councilor said this settlement is in no way the City admitting guilt. The Solicitor confirmed this to be true. He said, "The expressed statement in the proposed release acknowledges that we asserted defenses and that we do not acknowledge liability. We are paying a specific sum of money in order to ensure that that is all it will cost the City, and not run the risk that a jury might award a larger sum in damages and attorney's fees. The other side's attorney's fees would continue to mount as long as the case was pending, as well. And, since we're on the hook for their attorney's fees, an earlier settlement... obviously the law is designed to coalesce early settlements from employers."

The President said, "I believe that this suit actually was filed prior to the current Council taking office, at least for my term. Of all the discussions that I have had with the City Manager and City officials in my 6 months in office, this issue has been, by far, the most discouraging one to me. Every discussion that it seems that we've had has had a great deal of optimism to it in believing that we can improve the situation for our City and citizens based on actions we could take moving forward. And this issue is particularly disturbing to me because the outcome of this case will never restore the same quality of police care to our community, protection to our citizens, and fiscal condition of the City to what it could have been or previously was. I'm terribly disappointed that we did not have the opportunity, while I was in this position, to discuss with these officers an opportunity to try to retain the program, make them whole for anything that they felt weren't fairly compensated for, and utilize the great deal of unnecessary expenses incurred in legal fees by the taxpayers to do something for the betterment of the City. That probably sums up my feelings on this whole issue. As disappointed as I am to say that we have to bring this forward...I'm terribly petrified of what the alternatives would have been as a financial cost to the City."

On the roll call to waive the Charter requirement of two readings: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED. Mrs. Lattimer moved, Mrs. Stranman seconded to adopt the ordinance. On the roll call to adopt the ordinance: Mr. Pugliese, Mrs. Lattimer, Mr. Balog, Mrs. Stranman, Mr. McClure, Mr. Ducro voted yea; motion CARRIED.

**Thank you to Deputy City Auditor:** The President commended and thanked the Deputy City Auditor for doing a tremendous job filling in for the Clerk of Council this evening.

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### **UNFINISHED BUSINESS**

**Finance & Personnel Committee:** The President announced the next meeting of this Committee is scheduled for Friday, June 15, at 8:00 a.m.

**NEW BUSINESS - None**

**MISCELLANEOUS BUSINESS - None**

### **PUBLIC'S GENERAL PORTION**

**Nik Tressler, 202 West 58<sup>th</sup> Street:** reported several thousand art submissions were provided to the Rock and Roll Hall of Fame in Cleveland, OH; ten to twelve renderings submitted by five Lakeside High School students were chosen to be displayed in Cleveland Hopkins Airport. He suggested the student's art be displayed in the Municipal Building after leaving the airport. The Ward 3 Councilor reported reading in the newspaper that Conneaut Library is doing a mini art gallery. She is going to put feelers out about doing the same in Ashtabula.

**Barb Johnson, 425 West 52<sup>nd</sup> Street:** asked for the status of the tree on West 51<sup>st</sup> Street. The President said he walked through the yard a few days ago; could clearly see that it would be very difficult to mow the front section of the yard; did not notice it was "particularly bad back towards the tree"; put does need attention. The tree has had a lot of limbs come down; but did not know if the City is in the position of taking further actions on the tree. He believes the property owner needs to be identified. (Mary Fisher, per Mrs. Johnson). The Manager reported having the owner information and that the City is determining how to proceed. He reiterated the tree is on private property; that the City is not responsible for removing trees on private property; however realizes it is a nuisance. He said the City will try to intervene because of the nuisance, but it is a civil matter. He said the response the City has received is that the owner does not have funds to take action. The President invited Mrs. Johnson to continue to come to council meetings and speak on this matter, while reiterating that the matter is a civil one which the City is not responsible for but will try and assist with due to the nuisance.

The President reported a citizen was at this evening's meeting however might have left due to the length of the meeting. The President said he received a complaint regarding drug activity at a house. The citizen was particularly concerned because there have been arrests made previously in the house; there has been a drug overdose resulting in a death in the house; there has been a drug bust at the house, all in the last year or two; yet the illegal activity continues at the house and in the neighborhood. While he knows the police department is aware of this, he also knows many citizens are concerned about this type activity happening. He said the Broken Windows program is in place, and called on Police Chief Stell to comment on how to curb such problems and how citizens may keep safe by not intervening.

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The Police Chief reported being aware of the location in question; has had some dealing with it; and that discussion regarding extra patrol has recently taken place. He said his department does not mind receiving citizen calls regarding unwanted activities. He said the more the department has reason to be at a certain place the more difficult it is for the illegal activity to continue. The Chief said while resources are limited due to the economical environment we are faced with, arrests are still being made, and the jail is still maintaining a full status.

The President reported citizens do not understand why when they call to report the activity is in progress, staffing is a problem. The Chief reported many bedroom communities are not faced with such problems; however our community is faced with big city crimes, which problems and limitations frustrate the department. He said continued traffic at a location is a red flag but not proof of illegal activity.

**Foul Smell:** The Ward 2 Councilor asked if anyone received a call Saturday evening about the reoccurring foul smell. He said he did and contacted the fire department. No one responded that they received a call or witnessed the smell.

**Barb Johnson, 425 West 52<sup>nd</sup> Street:** asked if a speed bump may be placed on her street. The Ward 4 Councilor said if it could be done they would be placed on every side street.

**Adjournment:** Mrs. Lattimer moved, Mr. Pugliese seconded to adjourn the meeting.

DATE APPROVED: **September 4, 2012**

ATTESTED BY: \_\_\_\_\_

**J.P. Ducro IV**  
**President of Council**

ATTESTED BY: \_\_\_\_\_

**LaVette E. Hennigan, MMC**  
**Clerk of Council**