

CITY OF CANAL FULTON
CITY COUNCIL MEETING AGENDA
November 4, 2009

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **CORRECTING & ADOPTING THE RECORD OF PROCEEDINGS**

October 20, 2009
5. **REPORTS OF STANDING COMMITTEES**
6. **CITIZENS' COMMENTS – AGENDA MATTERS (Five Minutes per Individual – No Yield)**
7. **REPORTS OF ADMINISTRATIVE OFFICERS**
 - A. Senior Citizens
 - B. Community Service Coordinator
 - C. Fire Chief
 - D. Police Chief
 - E. Engineer/Streets/Public Utilities
 - F. Finance Director
 - G. City Manager

Representative from First Energy Solution
 - H. Report of Mayor
 - I. Parks & Recreation Board
 - J. Law Director
8. **THIRD READINGS**
9. **SECOND READINGS**
10. **FIRST READINGS**

Resolution 28-09: A Resolution Accepting the Amounts and Rates as Determined by the Budget Commission and Authorizing the Necessary Tax Levies and Certifying Them to the County Auditor.

Resolution 29-09: A Resolution by the Council of the City of Canal Fulton, Ohio to Adopt the Ohio Ethics Commission Restrictions on Nepotism.
11. **PURCHASE ORDERS & BILLS**

No Purchase Orders

BILLS: \$ To Be Distributed at Meeting
13. **OLD/NEW/OTHER BUSINESS**
14. **REPORT OF PRESIDENT PRO TEMPORE**
15. **REPORT OF SPECIAL COMMITTEES**
16. **CITIZENS COMMENTS – Open Discussion (Five Minute Rule)**
17. **ADJOURNMENT**

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Minutes of

Meeting

DAYTON LEGAL BLANK, INC. FORM NO. 10148

October 20, 2009

Held

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COUNCIL MEETING

Mayor John Grogan called the October 20, 2009 City Council meeting to order at 7:00 PM in Council Chambers at City Hall.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: James Deans, Danny Losch, Nellie Cihon, Linda Zahirsky and Matthew Moellendick.

Absent: Diane Downing

Mrs. Zahirsky moved to excuse Mrs. Downing due to a private matter, seconded by Mr. Losch. **ROLL: Yes, ALL.**

Mrs. Zahirsky stated her pay will be docked, just because excused doesn't mean pay won't be docked. There is an ordinance in place for this.

Others Present: Mark Cozy, City Manager; Scott Fellmeth, Law Director; Tammy Marthey, Clerk of Council; Scott Svab, Finance Director; Doug Swartz, Lieutenant; Ray Green, Fire Chief; Daniel Mayberry, Service Director; Tom Bellish, Direct Energy; Sue Mayberry, Rochelle Rossi, Janet Deans, Ray Nida, Donnie Poling, Ray Durkee, Dawn Durkee and Mike Mouse, Residents; Matthew Blakney and Terri Blakney, Visitors-Central Catholic High School; and Joan Porter, Repository.

EXECUTIVE SESSION

Mayor Grogan stated there is a need for executive session. They are requesting it be at the beginning of the meeting as it has to do with personnel for the fire department and police department.

Mrs. Cihon moved to adjourn to executive session at 7:02 PM for the appointment of a public employee or official, employment of a public employee or official, promotion or demotion of a public employee or official; and compensation of a public employee or official, seconded by Mr. Deans. **ROLL: Yes, ALL.**

Mrs. Zahirsky moved to return to public session at 7:16 PM, seconded by Mr. Deans. **ROLL: Yes, ALL.**

SWEARING IN

Mayor Grogan stated there is going to be a swearing in tonight for the police department, as well as the fire department.

Sasa Djordjevic: Mayor Grogan stated he would like to confirm the recommendation to appoint Mr. Sasa Djordjevic as part-time police officer.

Mrs. Zahirsky moved based upon the recommendation of the Mayor to appoint Mr. Sasa Djordjevic, seconded by Mrs. Cihon. **Roll: Yes, ALL.**

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Raymund Durkee: Mayor Grogan stated it is his recommendation to Council to promote Raymund Durkee from Captain to Assistant Fire Chief.

Mrs. Cihon moved based upon the recommendation of the Mayor to promote Raymund Durkee from Captain to Assistant Fire Chief, seconded by Mr. Losch. **ROLL: Yes, ALL.**

CORRECTING/ADOPTING THE RECORD OF PROCEEDINGS

Mrs. Zahirsky moved to approve the October 6, 2009 meeting minutes, seconded by Mr. Deans. **ROLL: Yes, Mr. Deans, Mr. Losch, Mrs. Zahirsky and Mr. Moellendick. Abstain, Mrs. Cihon.**

Mrs. Zahirsky stated she submitted her monies for the painting of the trash cans.

REPORTS OF STANDING COMMITTEES -

Personnel Committee: Mrs. Zahirsky stated the Personnel Committee met at 6:00 PM and discussed the issue of officer pay for the fire department. These discussions have gone back and forth since May and the committee is going to be making a recommendation for 2010 to the rest of council that fire chief's salary be moved to \$15,000 from \$13,000, the assistant chief salary to remain at \$6,500 and the three 3 captain's salary to be \$4,000 each. They would eliminate the lieutenant position. Eliminate lieutenant position. The meeting concluded at 6:40 PM.

Safety Committee: Mr. Losch moved to request a Safety Committee meeting for November 4, 2009 at 6:00 PM to discuss hunting and primitive weapons and a no texting while driving ordinance, seconded by Mrs. Cihon. **ROLL: Yes, ALL.**

Mrs. Zahirsky asked about a texting while driving ordinance.

Mr. Losch moved to have a Safety Committee meeting safety committee meeting at 6:00 PM on November 17 to discuss EMS/Fire staffing with Lawrence Township at City Hall, seconded by Mr. Deans. **ROLL: Yes, ALL.**

Mr. Deans wanted to confirm that there is a Finance Committee meeting scheduled for October 26 at 6:30 PM. It was stated yes.

Mr. Losch stated he wanted to comment about Lawrence Township's comments about the tornado sirens. The City is fully willing to participate in this. The City already has one siren and only needs two more. They would be able to do this without adding taxes. They have not dropped out of this. If it passes in the Township, the City will be moving forward with this issue.

CITIZENS' COMMENTS - AGENDA MATTERS - None

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REPORTS OF ADMINISTRATIVE OFFICERS

SENIOR CITIZENS (Nellie Cihon)

Bus Trip: There will be a bus trip to Rivers Oct 27, 2009. The trip is sold out.

Christmas Bazaar: The Christmas Bazaar is scheduled for November 7, 2009 at the Northwest Stark Senior Center.

Senior Trip: The Northwest Stark Senior Center is partnering with the Massillon Senior Center for a trip to Oglebay to see the Christmas lights and for a show. Nov 17 going with Massillon.

Swiss Steak Dinner: The swiss steak dinner will be on December 5, 2009. The last dinner they served 213 dinners.

COMMUNITY SERVICE (*John Murphy, Coordinator*) - Written

Public Hearing – 7:30 PM

Ordinance 31-09: An Ordinance Amending Chapter 1178 Entitled Suburban Office District of the Planning and Zoning Code of the Codified Ordinances of Canal Fulton, Ohio and Repealing Any Conflict Therewith.

Mr. Mouse asked for a brief reason why this is being considered.

The Mayor read the Codified Ordinance section, as well as the proposed ordinance with the changes.

There being no further public comments, the Public Hearing portion ended.

FIRE CHIEF (Ray Green, Fire Chief)

Quarterly Fire Chief Meeting Chief Green stated there was discussion on the pandemic flu at the meeting and Gov. Strickland has issued that if the need arose, EMS personnel would assist in giving vaccines if there is a pandemic flu outbreak. All personnel would be trained if necessary.

Mayor asked if Chief is aware of any positive H1N1 in school district. Chief Green stated he was not aware of any breakouts.

Life Net: New cardiac monitors are connected to Life Net. The system sends the reports directly to the emergency room a lot faster than when previously using cell phones to transmit data to the hospitals. They are now able to have a team ready upon arrival.

POLICE DEPARTMENT (Doug Swartz, Lieutenant) – No Report

Mr. Moellendick thanked Lieutenant Swartz and Officer Koontz for their assistance in working with the cub scouts.

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ENGINEER/STREETS/PUBLIC UTILITIES (Dan Mayberry)

2009 Locust/S. Canal Street Paving Project: Mr. Mayberry distributed a memo to council regarding the 2009 paving project. Problems surfaced while on working on Locust Street. There were many more square yards of repairs needed. It inflated the cost of the 2009 paving project by \$46,000. The funding for this project was from the Municipal Road Fund, which is from the license plate fees that are given back from the Commissioners. They will have to go back to the Municipal Road Fund to ask for more monies to complete S. Canal Street. There was a balance of about \$60,000 left from the project for S. Canal Street and it was going to require about \$113,000 to complete the project. He stated this is where his \$46,000 shortfall came from.

He stated we will have a good job on Locust Street. He stated the City has a grant in the works for sometime for 2011 to finish the balance of Locust Street.

Mr. Mayberry stated the manholes in the right of way will be to grade as well as the joint cracking.

Locust Street should be completed approximately mid next week.

Mayor asked how the engineering reviewed didn't show the materials underneath. He asked if there was some type of test that was conducted on the roadway prior to starting.

Mr. Mayberry stated soil borings were not done for this project. He stated the Municipal Road Fund money that we have been accumulating in order to make it stretch as far as they could. They did minimal preliminary work and in the end it would not have likely have changed anything except they possibly may have known the underneath conditions.

Mayor Grogan stated if this would have been done, they would have known the condition of the roadway and they would have probably attacked it differently as opposed to throwing the money at it and trying to do it normally or would they not have done it all and done the remainder of Locust Street. He is asking is at what part of the process did they review this and then determine that it was okay to do this project and now it put them in a shortfall.

Mr. Mayberry stated through a core sample they may have been able to tell the condition of the road and a core sample you are taking a representative sample from one area and making some assumptions. He stated it would be hoped that they would go down on the more severe spots. He stated Locust Street they later found out was a different animal than what they had begun with. He stated they felt there were red paving bricks over top of concrete on Locust Street. He stated in reality when they did surface grinding, they found that Locust Street was once a concrete road. This surprised them. He stated as they ground, they found that the concrete, because of the reflective cracking, was in much worse condition just due to the water that had crept down through the cracks carrying salt during the winter. He stated they may have caught the condition of the road by doing core samples.

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Mayor Grogan asked if it is standard procedure to do more than one core sample on a stretch of road.

Mr. Mayberry stated more than one core sample may be done. It depends on the amount of money they want to budget. He doesn't know if there is a standard. He stated they did do nine core samples along several thousand feet of road. This was done from Prospect to the corporate limits. He stated because they were seeking grant funding, there were some preliminary upfront costs to do more investigation in order to find out what type of repairs they may need to make and what conditions were under there. He stated it was a matter of trying to stretch the dollars in repairs more so than in a lot of detailed engineering. He stated you could say they learned a lesson but would not have changed the outcome. They would have only been able to brace themselves for a much more costly repair of Locust Street than what they had. He estimated it to be around \$123,000 and it came out to approximately \$170,000.

Mayor Grogan stated he isn't an expert but it sounds like to him had they had planned in the front end, now in the back end they are going to take a financial bite.

Mrs. Zahirsky stated they would not have done it any earlier.

Mayor Grogan stated it isn't the timeframe that is the issue, it is the preparation upfront. It's the engineering review that needs to be done prior to even initiating the project.

Mr. Moellendick stated in this instance, the financial bite comes from the cost of the change order of the extra work. He stated they can plan and take core samples. He stated the core samples are a four inch every several hundred feet across 24' of pavement and how long the job is. He stated it is a dart at a dart board to get the information you are looking for.

Mayor Grogan asked Mr. Moellendick in his professional experience in doing this, do these types of situations occur more on a regular basis than anything else?

Mr. Moellendick stated yes and no. He stated if you are trying to stretch your dollar to get the most paving, sometimes the sampling and things like that are the things that take the fall. He stated you are rolling the dice. He stated other times you are doing the sampling and the sampling comes out okay and the project conditions just dictate that you have to do this type of work and you are hoping that the contractor had the unit costs in his bid and you are not going to get stung by an increased cost other than the increase of materials. He stated if the contractor does not have the material in his bid, then he comes back and tells you. He stated this material was in the bid so he was just doing extra work and not work that was unplanned for.

Mr. Mayberry stated they approached the project with trying to stretch the dollars they had to work with and therefore, they limited the amount of engineering. They did some windshield review of the road with the engineer and did walk it with them but they didn't get down to the nuts and bolts with core samples. He stated a lot of times they are faulted for the preliminary work that they spend monies on for plans and specifications

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to follow. He stated they could have spent monies on the preliminary work. He stated they kind of have to roll the dice to a degree but with the best scientific data and skills that they have and determine the route they want to take. The additional costs spent to do extra engineering would not have changed the outcome.

Mr. Mayberry stated the City used their own inspectors on the job. They did not use CTI Engineers to try to save money. Generally the job went well. He stated paving isn't done a lot of in Canal Fulton, so for himself and the street superintendent it was a process.

Mayor Grogan stated he isn't trying to assign blame he wanted a healthy discussion referencing how these things happen and the outcome.

Mayor Grogan stated Mr. Moellendick's explanation made it a little clearer to him. He stated these things are dynamic and they change, but when he is asked by constituents, he wants to be able to give them the answers that he is getting from the department heads as to how these things happen.

Mr. Deans asked if there were any old records available that would have shown this.

Mr. Mayberry stated they don't have any construction records on Locust Street

Mr. Mayberry stated the utilities are off the berm of the road, therefore, they have never had to excavate along Locust Street.

Mr. Losch asked how much was going to be carried over in 2010 for the S. Canal project.

Mr. Mayberry stated \$61,140.

FINANCE DIRECTOR (Scott Svab)

September Financial Statement:

Mr. Svab stated the discussion they just had centers on the purchase order that he is adding to the agenda.

Mr. Svab stated the City will pay for the project and be reimbursed from the s out of the Municipal Road Fund. He stated in order to do this he has to amend the budget. He also has a few other line items that need revised as well.

He stated the purchase order for Northstar is for the actual original amount for both streets in the amount of \$211,267. The SCATS monies that they have are \$218,000. This is how much they had in the fund and he put the total amount in the fund not knowing how Council will decide on the project because it is still not completed and there may be other things that are going on.

Mr. Svab reviewed the September financial statement with Council regarding the transfer of funds. He also stated he will need a voice motion that members have received the September Financial Statement.

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Mr. Svab stated he has been meeting with council individually regarding Ordinance 33-09 relating to the Puffenberger property debt. He talked with council regarding 33-09. Puffenberger property note comes up at the end of November. He stated through conversations with council via telephone over the past two weeks, he has pointed out the benefits of retiring this note this year and the reason for it. The current interest rates are so low. They are lucky to be getting .2%. Between the interest and the legal writing fees, they will save between \$22-\$25,000. He stated the current interest rates are so low, they are lucky to be getting .13% and the CD's at Huntington and First Merit sweep account; they have been averaging .2%. He stated that Council has been aware that the interest has been greatly reduced this year and don't anticipate moving anything soon. He stated they could go out for a 1-2 year CD note and still only get 1% interest. His recommendation is to pay off this note early as we are in a position to do this. We stated they rolled over the note last year because it is when the beginning of the banking crisis. They had budgeted \$200,000 to pay on this park note last year, but because they didn't know if they were going to be able to place the note and our carryover balance, we decided to roll over the note and hold the balance. He stated part of the \$200,000 was in the general fund carryover that they saw in the \$389,000 carryover balance last year. There was also some money in the green space fees and also some money in the 391 capital administration. He stated this year they looked at the number hard and along with the monies that was budgeted last year, and the same amount was budgeted this year, and income tax collections are at a record high, 85.4% collected, which is a balance of \$1,522,000. He spoke with Mr. Fleming and he has over \$57,000 in the green space fees that he would have liked to have done some engineering with, but after he heard the proposal of them paying off the note early, he was on board and didn't have a problem with them taking from that fund.

Mr. Svab stated with the various funds and the carryover, and the anticipation of our healthy income tax in the last fourth quarter, he definitely thinks it is doable and thinks it would be a wise decision, not only to pay off the debt, and save the \$27,000, the worse case scenario they will only be using a little bit of the sewer funds for one year as an internal money that they would normally take out to a CD and they are going to use it to pay off the debt early. He feels at this point that it is the wisest decision that they can do. He stated it seemed that every council member he spoke with has been onboard with this. They are the decision makers on this but he would make a recommendation that they pay it off.

Mrs. Zahirsky stated normally debt is not a bad thing to have when a property like this or debt on the fire department. She stated when spreading the cost of the asset over a number of years because a number of people are going to be using them. She stated it isn't fair to take out of the pockets today to pay for something that someone 10-15 years will be using when they should help pay for it too. Normally she would say to roll it over and take on the debt for it, but they are in such a financial crisis now and bonds have been going belly up and it is hard to get people to invest in notes and bonds from cities, so we are in a catch 22. They are in an unusual situation where they are going to have to recommend paying something off when they normally wouldn't. The future users of the park should pay for it as well, but they will have to pay for it when it comes to developing.

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Mr. Svab stated contrary to the reports out there, the 2008 audit which is online, the cities debt which he is reading from, the balance reflected a decrease of \$377,000 from previous years balance. They totally paid down 7.5% of the debt last year and in 2007 they paid 7.6%. They have been fiscally responsible, not only by not over budgeting their fund and keeping the carryovers to pay off debt and waiting for the right time. He feels at this time with the unfortunate low interest rates being so low, we can not earn enough out of their own money just to hold it. Normally it supplements a lot of general fund money, where they have \$80-100,000 depending on the 4-5% spread that they have enjoyed in the last couple of years.

He stated at this time, he would recommend to council, he feels it is going to be healthier on their balance sheet to reduce this debt at this time.

Mr. Deans feels if they can have less debt and have savings from the interest, it is better to pay off the debt at this time.

Mr. Losch stated he is reviewing the capital list from Mr. Cozy. He stated he wants to be careful that we keep an eye on what we are looking for in the future. He agrees it would be a good move to save the monies by paying off the debt and actually own the property. He stated they are going to have to move some projects to general funds, capital requests and he knows they will be looking at that soon. He wants to keep this in mind.

Mr. Svab stated they had some money budgeted in the 391 fund for the culvert project that didn't go through and was pushed out for another year to get more grant matched funds so there was some money there that is going to be used for the repayment.

He stated at this time he is asking council if this is the way they wish to proceed and at the next council meeting he will have the actual purchase order and the various funds which it is coming out of to pay the note off.

He would ask that they don't act on Ordinance 33-09 if they are going to pay off the debt.

Mrs. Cihon moved that they have received September financial statement, seconded by Mrs. Zahirsky. Roll; Yes, ALL.

CITY MANAGER (Mark Cozy)

Mayor Grogan stated Mr. Cozy is absent due to family obligation with his daughter. He stated Mr. Cozy has issued a report for all members of Council and will review it on his behalf. He stated the first part of the Manager's report for the gas aggregation program for the City.

Direct Energy (Mr. Bellish) Mr. Bellish was in attendance to answer any questions Council may have regarding the City's aggregation program. There have been some changes to the contract. Direct Energy would like to change some of the wording to their contract. Not to use the word endorsement, using opt-in now.

Direct Energy will need to have legislation passed in order to enroll new customers. Customers would then be able to opt-in as of Friday.

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Mayor Grogan stated he is going to read the remainder of the City Manager's Report.

Mayor Grogan stated he wasn't going to read the rest because it sounded more political than it was a report. He stated he would leave the report available and there are copies available for anyone that wants them. It has been read as requested.

REPORT OF MAYOR

No Report

PARKS & RECREATION BOARD (Fred Fleming) - Not Present

Mayor Grogan stated there is a park board seat that has been vacated. The chairman of the board and the Mayor is seeking someone to serve on this committee.

LAW DIRECTOR (Scott Fellmeth) - No Report

THIRD READINGS

TABLED: Resolution 15-09: A Resolution by the Council for the City of Canal Fulton, Ohio To Create a Fund to Purchase A Fire Truck and A Bonus Pool to Provide Compensation to Fire Personnel.

Ordinance 31-09: An Ordinance Amending Chapter 1178 Entitled Suburban Office District of the Planning and Zoning Code of the Codified Ordinances of Canal Fulton, Ohio and Repealing Any Ordinance in Conflict Therewith.

Mrs. Zahirsky moved for passage of Ordinance 31-09, seconded by Mrs. Cihon. **Roll: Yes, ALL.**

Mrs. Zahirsky stated the Planning Commission worked on this and appreciates their work.

SECOND READINGS - None

FIRST READINGS

Ordinance 33-09: An Ordinance Providing for the Issuance and Sale of Not-To-Exceed \$605,000 of Notes, In Anticipation of the Issuance of Bonds, to Pay Costs of Acquiring Certain Real Estate and Interests Therein to Expand the City's Municipal Complex, and Declaring an Emergency.

Mr. Deans moved to suspend the rules on Ordinance 33-09, seconded by Mrs. Cihon. **ROLL: Yes, ALL.**

Mr. Svab stated if they want him to move forward with paying off the debt, they will need to defeat this Ordinance. If they would like a portion of it paid off, then pass the Ordinance.

Mrs. Cihon moved for passage of Ordinance 33-09 under suspension, seconded by Mr. Deans. **ROLL: No, ALL.**

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Ordinance 34-09: An Ordinance Authorizing the City Manager to Enter into An Agreement Related to the Marketing of Competitive Retail Natural Gas Supply and Declaring an Emergency.

Mrs. Cihon moved to suspend the rules on Ordinance 34-09, seconded by Mrs. Zahirsky. **ROLL: Yes, ALL.**

Mrs. Zahirsky moved for passage under suspension, seconded by Mrs. Cihon. **ROLL: Yes, ALL.**

Ordinance 35-09: An Ordinance Amending Ordinance 5-09, and Providing for the Transfer of Funds Within Various Accounts for the Purpose of Paying Various City Obligations, and Declaring an Emergency.

Mrs. Cihon moved to suspend the rules on Ordinance 35-09, seconded by Mrs. Zahirsky. **ROLL: Yes, ALL.**

Mr. Moellendick moved for passage under suspension, seconded by Mrs. Zahirsky. **ROLL: Yes, ALL.**

Mrs. Zahirsky stated this type of ordinance is something in years past that they would see all the time. When they had new finance directors, they failed to do this which caused auditors to cite the city. She thanked Mr. Svab for taking care of this.

PURCHASE ORDERS & BILLS

P.O. 5789 to Northstar Asphalt Company in the amount of \$211,267 for Locust and Canal Street.

Mrs. Cihon moved for passage of P.O. 5789, seconded by Mr. Moellendick. **ROLL: Yes, ALL.**

Bills: \$116,625.16 Mr. Moellendick moved to accept the bills, seconded by Mrs. Cihon. **ROLL: Yes, ALL.**

Law Director Fellmeth stated he had a point of order regarding Resolution 15-09. He stated it is his recommendation that they kill Ordinance 15-09 since a recommendation has been made regarding the salaries.

Resolution 15-09: An Ordinance Amending Chapter 1178 Entitled Suburban Office District of the Planning and Zoning Code of the Codified Ordinances of Canal Fulton, Ohio and Repealing Any Ordinance in Conflict Therewith.

Mrs. Zahirsky moved to bring Resolution 15-09 back to table, seconded by Mr. Losch. **ROLL: Yes, ALL.**

Mrs. Zahirsky moved for passage of 15-09, no second. **Resolution fails.**

OLD/NEW/OTHER BUSINESS -

Campaign Signs: Mr. Losch stated he has been receiving a lot of complaints about the huge campaign signs. He stated he was going to quote one of the complaints he received, "When did the City start allowing people to start putting billboards in our City". He statement his him and he was getting the impression that this gentleman was thinking the City was okaying these signs. He stated he made it clear to him that we do

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have ordinances on the sizes of the signs and that letters have been sent out. However, it is his understanding that the City is not taking any action towards this. He wanted to make it clear for those that are concerned about the signs, the City has already sent out letters to people who have the oversize signs.

Mayor Grogan stated as a point of order that the City was approached by the Zoning Inspector referencing the signs. The Law Director, City Manager and himself had extensive conversations referencing this issue. He stated there are several appellate decisions in regards to free speech. He stated even though we have an ordinance stating that they can't be of a certain size, there are cases out there that are still pending that kind of muddy up this particular situation. He felt it was in the best interest of everybody if they just received letter as a reminder to let them know that they were in violation of that particular ordinance. He stated the election will be over with before anything can be done, so it is just a matter of the notification process that needed to be put out there. There have been several cases that have been reviewed. He spent the night looking at them and he knows the Law Director has reviewed.

Law Director Fellmeth gave history on the court law relating signage. He stated there is a conflict between jurisdictions right now.

Mr. Mouse stated the question is what does the Council want to do about the signs because the Supreme Court is doing one way and he hears council concerned about it.

Mr. Mouse stated if Mr. Losch wanted, he would advise him to pursue it further and as Mr. Fellmeth knows, they will see him in court.

Mr. Losch stated this is not his intention. He stated he is giving information that he received from a resident who was complaining about it.

Mr. Mouse stated he should redirect his attention to the First Amendment and then found out what it says.

Mayor Grogan stated they have not reached the public comments yet and asked for order.

Mr. Deans stated when he was putting his signs out he knocked on the doors and asked permission. He stated he was told several times that even though there were other signs on the property, that he was first one to ask permission.

Mayor Grogan stated they need to stay on agenda matters. He doesn't want this to be a pulpit for running for office. He stated if there is an issue where a constituent has brought up a concern that needs to be brought traveling down that road. He wants to limit it to concerns or comments from their own constituents.

REPORT OF PRESIDENT PRO TEMPORE (Mrs. Cihon) -

Mrs. Cihon stated she missed last council meeting due to being at Cape Cod with senior citizens from the Northwest Stark Senior Center and did not get paid for that meeting or the other meetings that she missed.

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REPORT OF SPECIAL COMMITTEES

Paint the Town: Mr. Losch stated the paint the town program has saved residents about \$2,550 and the program is only three months old. He would invite ideas on how to grow this program.

CITIZENS COMMENTS-Open Discussion (Five-Minute Rule)

Mike Mouse: Mr. Mouse stated under Mr. Cozy's comment, he agrees with the Mayor that his letter seemed to morph into a political treaty. He personally thinks it's unseemly for appointed officials to inject themselves into a political campaign. He stated this would suggest that they are running with the candidates and doesn't feel they want to put themselves in that position.

He stated in response to Mr. Dean's comment, he said everywhere their signs are, the owner has been asked.

Mr. Deans stated he was directing this to him. He was directing it to everybody.

Mr. Mouse stated at the bottom of Mr. Cozy's first page, it said, one of the candidates.....he stated he wish they would get past this Casper the ghost syndrome where they anonymously attribute something to Casper. He stated if they want to contribute something, don't do it to Casper, name the name and say who it was so they can defend themselves if it was addressed to them.

Ray Nida: Mr. Nida asked Mr. Mouse if he placed a sign on the cemetery lot.

Mayor Grogan stated this section is to address Council.

Mr. Nida stated he is a veteran and Veteran's Day is on November 11, 2009. The Northwest Schools and Sts. Philip and James put on some nice programs.

There will be an event on November 11, 2009 at 10:00 AM at Northwest High School

Clerk's Note: The recording machine had a mechanical malfunction at 8:44 PM Rest of meeting taken by notes.

He would recommend that the City do something to honor the veteran's. He stated the schools programs are very patriotic.

ADJOURNMENT

Tammy Marthey, Clerk of Council

John Grogan, Mayor

RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE
BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND
CERTIFYING THEM TO THE COUNTY AUDITOR

Revised Code, Secs. 5705.34-5705.35

~~The (Council of the) CANAL EULETON CITY~~

Of Stark County, Ohio, met in _____ Session on the ____ day of
_____ at the office of _____ with the following members present:

Mr./Ms. _____ moved the adoption of the following Resolution:

WHEREAS, This council in accordance with the provisions of law has previously adopted a Tax Budget for the next succeeding fiscal year commencing January 1st, **2010**; and

WHEREAS, The Budget Commission of Stark County, Ohio, has certified its action thereon to this council together with an estimate by the County Auditor of the rate of each tax necessary to be levied by this (Council/Board), and what part thereof is without, and what part within the ten mill limitation; there be it

RESOLVED, by the (Council) of _____ City/Village, Stark County, Ohio that the amounts and rates, as determined by the Budget Commission in its certification, be and the same are hereby accepted: and be it further

RESOLVED, That there be and is hereby levied on the tax duplicate of said (Village/City) the rate of each

SCHEDULE A

**SUMMARY OF AMOUNTS REQUIRED FROM GENERAL PROPERTY TAX APPROVED
BY BUDGET COMMISSION, AND COUNTY AUDITOR'S ESTIMATED TAX RATES**

<u>FUND</u>	Amount to be derived from Levies outside 10 mill Limitation	Amount Approved by Budget Commission Inside 10 Mill Limitation	<u>County Auditor's Estimate of Tax Rate to be Levied</u>	
			Inside	Outside
General Fund		244,136	2.50	
Bond Retirement Fund	117,185			1.20
Total	117,185	244,136	2.50	1.20

SCHEDULE B
LEVIES OUTSIDE 10 MILL LIMITATION, EXCLUSIVE OF DEBT LEVIES

FUND	Maximum Rate Authorized to be Levied	County Auditor's Estimate of Yield of Levy
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GENERAL FUND:

Current expense levy authorized by voters on
for not to exceed Continued years.

Emergency Current expense levy authorized by voters on
for not to exceed 5 years.

Emergency Current expense levy authorized by voters on
for not to exceed Continued years.

Current expense levy authorized by voters on
for not to exceed Continued years.

Current expense levy authorized by voters on
for not to exceed Continued years.

Current expense levy authorized by voters on
for not to exceed 5 years.

Current expense levy authorized by voters on
for not to exceed Continued years.

Current expense levy authorized by voters on
for not to exceed Continued years.

Current expense levy authorized by voters on
for not to exceed Continued years.

Current expense levy authorized by voters on
for not to exceed years.

Bond Fund: Levy authorized by voters on 11/8/05
for not to exceed 20 years.

1.20

117,185

And be it further

Resolved, That the clerk of this Board be and he is hereby directed to certify a copy of this resolution to the County Auditor of said County.

Mr./Ms. _____ seconded the Resolution and the roll being called upon its adoption the vote resulted as follows:

Mr/Ms. _____

Mr/Ms. _____

Mr/Ms. _____

Mr/Ms. _____

Mr/Ms. _____

Mr/Ms. _____

Adopted the

day of

**CERTIFICATE TO COPY
ORIGINAL ON FILE**

The State of Ohio, Stark County, Ss.

I, _____ Clerk City/Village of _____

Within and for said County, and in whose custody the Files and Records of said Council are required by the Laws of the State of Ohio to be kept, do hereby certify that the foregoing is taken and copied from the Original

now on file, that the foregoing has been compared by me with said original document, and that the same is true and correct copy thereof.

Witness my signature, this _____ day of _____, _____.

Clerk

No. _____

City/Village _____, Stark County Ohio.

Resolution

Accepting the amounts and rates as determined by the Budget Commission and authorizing the necessary tax levies and certifying them to the County Auditor.

Adopted _____, _____

Clerk

Filed _____, _____

County Auditor

By _____
Deputy Auditor

RECORD OF RESOLUTIONS

Dillon Legal Blank Co. Form No. 50045

Resolution No. 29-09

Passed _____, 20__

A RESOLUTION BY THE COUNCIL OF THE CITY OF CANAL FULTON, OHIO TO ADOPT THE OHIO ETHICS COMMISSION RESTRICTIONS ON NEPOTISM

WHEREAS, the City of Canal Fulton, Ohio desires to adopt the guidelines of the Ohio Ethics Commission for restrictions on nepotism or hiring family members.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CANAL FULTON, OHIO, THAT:

The City of Canal Fulton agrees to adopt the Ohio Ethics Commission restrictions on nepotism as set forth in attached Exhibit "A".

John Grogan, Mayor

ATTEST:

Tammy Marthey, Clerk-of-Council

I, Tammy Marthey, Clerk-of-Council of the City of Canal Fulton, Ohio, do hereby certify that this is a true and correct copy of Resolution _____-09, duly adopted by the Council of the City of Canal Fulton, on the date of _____, 2009, and that publication of the foregoing Resolution was duly made by posting true and correct copies thereof at five of the most public places in said corporation as determined by Council as follows: Post Office, Public Library, Giant Eagle Supermarket, Heritage Square Pharmacy, and entrances to Council Chambers each for a period of fifteen days, commencing on the _____ day of _____, 2009.

Tammy Marthey, Clerk-of-Council

SEF/bp

Exhibit "A"

Ben Rose, *Chair*
 Shirley Mays, *Vice Chair*
 Merom Brachman
 Betty Davis
 Ann Marie Tracey

David E. Frecl,
Executive Director



OHIO ETHICS COMMISSION
 8 East Long Street, 10th Floor
 Columbus, Ohio 43215
 Telephone: (614) 466-7090
 Fax: (614) 466-8368

www.ethics.ohio.gov

**RESTRICTIONS ON NEPOTISM OR HIRING FAMILY MEMBERS:
 Ethics Commission Information Sheet # 1**

I. Introduction

The Ohio Ethics Law and related statutes are found in Ohio Revised Code (R.C.) Chapter 102, and Sections 2921.42 and 2921.43. These laws generally prohibit public officials and employees from misusing their official positions for their own personal benefit or the benefit of their family members or business associates.

The Ethics Law applies to all people who serve as officials and employees for public agencies in Ohio. "Public agencies" include state departments, boards, and commissions, counties, cities, villages, townships, school districts, public colleges and universities, public libraries, port authorities, and all other public entities.

The Ohio Ethics Commission was created to administer, interpret, and assist in the enforcement of the Ethics Law for all officials in the state, except members and employees of the General Assembly and judicial officers and employees.¹ In this information sheet, the word "official" indicates any person who serves a public agency, whether elected, appointed, or employed.

II. Purpose of this Information Sheet

The Commission prepared this information sheet to explain the Law as it applies to situations where a relative of an official seeks a job with the public agency she serves.

III. Summary of the Law

The Ohio Ethics Law and related statutes prohibit an official from:

- Authorizing the employment of a family member; and
- Using the authority or influence of her public position to secure authorization of the employment of a family member.

An official is prohibited from hiring a family member in any employment position, including a full-time, part-time, temporary or permanent position, a position in the classified or unclassified civil service, or a non-civil service position.

In most situations, the Ohio Ethics Law and related statutes do not prohibit family members from being employed by the same public agency, as long as no official has secured a job, or job-related benefits, for her family member.

Restrictions on Hiring Family Members
Page 2

IV. Prohibition Against Authorizing a Family Member's Employment

R.C. 2921.42 (A)(1) prohibits a public official from authorizing the employment of a family member. A "public official" is any elected or appointed officer, or employee, of the state or any political subdivision of the state.

A "member of [an official's] family" includes the following relatives, regardless of where they reside: (1) spouse; (2) children (whether dependent or not); (3) siblings; (4) parents; (5) grandparents; and (6) grandchildren.² It also includes any other person related by blood or by marriage and living in the same household.³

An official has "authorized" the employment of a family member when the employment could not have been awarded without the approval of the official. In other words, under this section, an official is prohibited from making the final decision about whether a family member should be hired. For example, an official is prohibited from voting to hire a family member.⁴

If the official makes the final hiring decisions for the public agency she serves, her family members cannot be employed by the public agency. For example, a county office holder cannot hire a family member and cannot delegate the authority to hire her family members to a subordinate employee, which means that her family members cannot be hired by her office.⁵ However, a person who worked in the office before her relative is elected is not prohibited from continuing to work for the office, as long as the terms and conditions of her employment are not changed through promotion or other actions described below.

V. Using Position to Secure Job

An official is also prohibited, by R.C. 2921.42(A)(1) from using the "authority or influence of" her public position to secure a job for a family member.⁶ Even if an official abstains from decisions, the law prohibits the official from discussing, recommending, or otherwise using the prestige of her office, formally or informally, to get a family member a job.⁷

R.C. 102.03(D) also prohibits an official from using her position to secure a job for a family member.⁸ R.C. 102.03(D) and (E) prohibit an official from using her influence with other public officers or employees, especially subordinates, to persuade them to hire her family member.⁹

VI. Using Position After Employment

The prohibitions in R.C. 2921.42(A)(1) and 102.03(D) continue after an official's family member has been employed.

R.C. 2921.42(A)(1) prohibits an official from participating in any decision, or using her position to secure any decision, that affects the continuation, implementation, or terms and conditions of a family member's employment.¹⁰ For example, an official is prohibited from participating in matters related to the renewal, modification, or termination of a family member's public employment.¹¹

R.C. 102.03(D) prohibits an official from participating, formally or informally, in any matter that directly affects a family member's employment.¹² For example, R.C. 102.03(D) prohibits an official from securing any employment-related benefits for a family member.

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Page 3

For example, a public official is prohibited from participating in matters affecting her family member's employment including: (1) changes in compensation or benefits; (2) assignment of duties; (3) evaluations; and (4) actions involving promotions, disciplinary actions, lay-offs, and removal.¹³ R.C. 102.03(D) also prohibits an official from influencing the decisions or actions of other officials or employees, particularly subordinates, regarding a family member's job with the public agency or any job-related benefits.

VII. Actions That Are Not Prohibited

R.C. 2921.42(A)(1) and 102.03(D) do not prohibit an official from participating in certain matters in which a family member has an indirect interest or from which a family member may indirectly benefit.

A. Approval of Union Contract: An official is not prohibited from approving a union contract when her relative is a member of the union, unless the relative serves as a union officer, board member, or on the union negotiating team or the official is covered by health insurance under the contract.¹⁴

B. Matters Affecting a Class: The law generally does not prohibit a public official from voting on an ordinance or resolution to fix the compensation of a class of employees, one of whom is a relative of the official. However, an official is prohibited from voting on an ordinance setting compensation for employees if the ordinance: (a) establishes compensation on a basis other than membership in the class of employees; (b) affects the family member's compensation in a differential manner than other members of the class; or (c) secures, renews, modifies, or renegotiates the terms of the family member's job.¹⁵

C. General Appropriations: The law also does not prohibit an official from participating in a general budgetary appropriation that includes money to fund a family member's compensation and benefits, or from participating in budgetary appropriations to a department that employs a family member. However, the appropriation cannot provide the official or employee with the authority or discretion to alter the compensation and benefits for her family member, and must provide compensation and benefits that are identical for all members in the class.¹⁶

VIII. Other Considerations

Where an official's spouse is employed by the public agency she serves, and the official is covered under health insurance provided by the agency to her spouse, there is an additional restriction. In that case, the official is receiving a thing of value, for purposes of R.C. 102.03(D) and (E). While the official is not prohibited from receiving the health insurance coverage, she is prohibited from taking any action to approve the union contract if it includes health insurance benefits and she is covered under those benefits.¹⁷

Any official whose family member has applied for a job with her public agency should ask her supervisors, or legal counsel for the public agency, whether the public agency has a policy or rule regarding employment of family members. (A public agency cannot create a policy or rule that is less restrictive than the prohibitions described above. However, a governmental entity can have a policy or rule that is more restrictive than the Ethics Law.)

Restrictions on Hiring Family Members
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Finally, while the Ethics Law does not absolutely prohibit relatives from working for the same public agency, questions of fairness and impartiality may arise in such situations. Further, such hires may present the appearance of impropriety to the public, even where the public official fully and completely removes herself from participating in the hiring process, as described above. A public agency may be able to minimize these concerns if the agency conducts all hiring activity in a fair, open, and impartial manner.

IX. Penalties

The Ethics Law and related statutes are criminal laws. If a person is convicted of violating an ethics law, that person may receive a jail sentence and/or have a fine levied against her.

R.C. 2921.42(A)(1) is a fourth-degree felony with a maximum penalty of eighteen months in prison and/or a \$5000 fine. R.C. 102.03(D) is a first-degree misdemeanor with a maximum penalty of six months in prison and/or a \$1000 fine.

X. Conclusion

Please contact the Ethics Commission if you have questions about this information sheet or the Ohio Ethics Laws. This information sheet is not an advisory opinion, and is not intended to provide advice on specific facts. Copies of the Commission's formal advisory opinions can be obtained from: Ohio Ethics Commission, 8 East Long Street, The Atlas Building, 10th Floor, Columbus Ohio, 432315-2940; telephone (614) 466-7090, and on the Commission's Web site: www.ethics.ohio.gov.

Endnotes:

¹ The ethics agency with jurisdiction over ethics issues related to members and employees of the General Assembly is the Joint Legislative Ethics Committee. The ethics agency with jurisdiction over ethics issues related to judicial officers and employees is the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

² Ohio Ethics Commission Advisory Opinion No. 80-001.

³ Adv. Op. No. 80-001.

⁴ Adv. Ops. No. 85-015 and 97-004.

⁵ Adv. Op. No. 85-015.

⁶ Adv. Ops. No. 92-012 and 98-003.

⁷ Adv. Op. No. 92-012.

⁸ R.C. 102.01(B) and (C); A "public official or employee" includes any person who is elected or appointed to an office or is an employee of any public agency.

⁹ Adv. Op. No. 97-004.

¹⁰ See Adv. Ops. No. 82-003, 89-005, and 92-012.

¹¹ Adv. Op. No. 92-012.

¹² Adv. Ops. No. 90-004, 91-004, and 92-012.

¹³ Adv. Op. No. 92-012.

¹⁴ Adv. Ops. No. 89-005, 92-017, and 98-003.

¹⁵ Adv. Op. No. 92-012.

¹⁶ Adv. Op. No. 91-004.

¹⁷ Adv. Op. No. 92-017.

DEFINITIONS

For purposes of this resolution, the following definitions apply:

1. "Public official or employee" means any person who is elected or appointed to an office, or is an employee of any public agency under the jurisdiction and control of the City of Canal Fulton. Public employee includes part-time interns, paid student help, temporary, intermittent and seasonal employees.
2. "Closely related by blood or marriage" is defined to include, but is not limited to spouse, children (whether dependent or independent), parents, grandparents, siblings, aunts, uncles, step-children, step-parents, step-grandparents, step-siblings, step-aunts, step-uncles, and other persons related by blood or marriage who reside in the same household.
3. "Significant relationship" means people living together as a spousal or family unit when not legally married or related where the nature of the relationship may impair the objectivity or independence of judgment of one individual working with the other.
4. "Business associates" are defined as parties who are joined together in a relationship for business purposes or acting together to pursue a common business purpose or enterprise.
5. "Supervision" means the direct ability or power to effectively recommend the hire, transfer, suspension, layoff, recall, promotion, discharge, assignment, reward, discipline or settlement of disciplinary grievances or appeals of other public employee, including the authority of a board or committee to order personnel actions affecting the job.

All public officials and employees are prohibited from authorizing or using the authority or influence of his or her position to secure the authorization of employment or benefit (including a promotion or preferential treatment) for a person closely related by blood, marriage or other significant relationship including business association.