

**COUNCIL MINUTES**  
**November 19, 2012**

The regular Council Meeting was held on Monday, November 19, 2012 at 7:00 PM in the Euclid Municipal Center Council Chamber. Council President Holzheimer Gail presided.

Members Present: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail.

Excused: Van Ho

Councilman Langman moved to excuse Councilman Van Ho. Councilman Langman seconded. Yeas: Unanimous.

Others Present: Mayor Cervenik, Law Director Frey, Finance Director Malone, Community Development Director Pietravoia, Service Director Bock, Fire Chief Cosgriff, Police Chief Brickman, Recreation Mgr. Stephens, Commissioner Beno, Supt. Hall, Clerk of Council Cahill.

**Liquor Permit**

Councilman McLaughlin moved to object to a new D5 liquor permit to Blue Print LLC, 22810 Lake Shore Blvd., Euclid, OH 44123 Councilman Langman seconded.

Director Frey – This operator who has made application at this location previously operated a facility called Taps Bar on Euclid Ave., that the email and attached reports indicated with had issues with after hour sales. We just got out of a problem property at this location, the former S&S Lounge. I concur this is not an appropriate facility for the city.

Roll Call: Yeas: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail. Objection Approved.

**Council Minutes**

Councilwoman Scarniench moved to accept the Council Minutes of November 5, 2012. Councilwoman Caviness seconded. Yeas: Unanimous.

**ADMINISTRATION REPORTS & COMMUNICATIONS**

Mayor Cervenik and Chief Brickman administered the Oath of Office to five new police officers that are replacing retired officers. They are: James Meador; Harry Lovejoy; Roosevelt Linder, Jeffrey Herold, Michael Brooks.

Mayor Cervenik – Friday, November 30<sup>th</sup> from 4:00-9:00 PM at Shore Cultural Centre is the second annual holiday celebration. We have lighting ceremony at 6 PM. The fun starts at 4 with children activities and concert and holiday sing-along. After the lighting ceremony at 6 we have Santa and Mrs. Claus coming to say hello. There will be rides in a horse drawn sleigh and another concert later on in the day. You can also visit the holiday shop or stop in the Bistro for a delicious holiday meal. For those that don't know, the Bistro is a culinary school at Shore.

While you're there, take a walk through the building. I was fortunate enough last week, we had 100 volunteers from Progressive Insurance Company come to the building for a day of service. It was quite impressive and progressive, what they did. They were painting, cleaning, gluing ceiling tiles. They were doing real serious work, not just a little dusting here or there and it was very exciting to see that. Any corporation or group that wants to volunteer hours at Shore, we'll be glad to have you. They called it fun and I said, we've got thousands and thousands of hours of fun at Shore Cultural Centre. Anyone who is interested in doing something like that as a group, please let us know we certainly can accommodate you and I wanted to thank Progressive for that. Looking forward to seeing everybody at the Holiday Celebration. More importantly, I firmly wish everyone here and everyone watching at home and all the residents of Euclid, a very happy and enjoyable Thanksgiving weekend. Take a lot of time and spend it with your family. Spend it with some of your neighbors, check on the senior citizens that maybe pretty much alone. Include them in your day and just remember to be thankful for everything we have. That ends communications.

**REPORTS & COMMITTEE MINUTES**

Councilwoman Scarniench moved to receive the Monthly Finance Report through October 31, 2012; Board of Control Minutes of 10/29/12 and 11/05/12. Councilwoman Caviness seconded. Yeas: Unanimous.

**COMMITTEE OF THE WHOLE FOR LEGISLATIVE MATTERS ONLY**

Det. Daniel Novitski – I'm here on behalf of the Fraternal Order of Police, Lodge 18 Political Action Committee, 545 E. 222 St. The reason I'm here today is to discuss Res. (195-12), most specifically the passage of the collective bargaining agreement for 2012-2014 between the City of Euclid and the FOP.

It has come to my attention and I understand some members of Council are opposed or have some reservations to the contract. I'm here to let you know so are some of our members of the union as well.

I'd like to give you a little background into the contract negotiations and what we've done. This has been over a year of negotiations between the city and FOP. We began talks last October. Talks extended into 2012. At that time the city signed off on a retro-active agreement when the negotiations extended beyond the normal negotiation standards.

Some of my understanding, some of the reservations that Council has is that the Police and Fire contracts don't mirror each other. I want you to know Police & Fire don't negotiate together. They should not be looked at equally when it comes to our contracts. Each contract between the city and the respective bargaining units have always been individually negotiated. Each unit has individual needs and each contract provides benefits that are specific to either police or fire.

When it comes to equality among all units, police and fire personnel are subject to risk that other units are not. City government is established to provide the protection and services to the citizen. The police department is the face of that government. Police are there 24 hours a day, 365 days a year, ready to aid citizens at a moment's notice. Protection and safety of the citizens are the number one priority of the city government. That protection is provided for by police and fire. No one wants to live, work or invest in an area that is considered to be unsafe.

When it comes to our contract in comparison with other cities, actually let me get into something else. There's been a lot of talk of unions, a lot of political talk that unions are ruining America. Unions were formed to protect their members. Providing for safe working conditions and provide a fair wage. These unions prevent us from becoming for some nations where working conditions and human rights are being called under question. Unions negotiate for the good of their members as a whole. Within the Police Dept. itself, we have several members, such as forensic computer analysts, examiners, accident reconstructionists, that if they were put into the private sector would make thousands more than their current salaries. But they stay here feeling a sense of duty and honor in providing their services to your city.

Going back in the history of our contract, the city and union has agreed to bargain collectively before Ohio had any legislation for collective bargaining, before there was binding arbitration. These two sides have reached agreements in the past that have proven beneficial for both the city and for the union. In lieu of pay raises when the city could not afford them, they provided for time off. Now in this contract we've agreed to give some of that time off back.

There have been provisions mutually agreed on that were created in lieu of raises to the base pay. These allow certain funds to be non-pensionable saving the city money. Our base pay has fallen far below what other cities of comparable size and make up. When all of our benefits are added in, we fall right in the middle of the pack when it comes to the prevailing wage. Just to give an example, I want say years ago, at the end of this contract, our base pay is going to be about \$12,000 less than what Beachwood was making three years ago.

If we wish to remain competitive and recruit not only qualified candidates but the best candidates for the position, minimally we need to maintain not only this level but start looking to improve this. As the Mayor stated in his remarks this evening, we're lucky to have a strong and confident police department. If you've looked in your newspaper a couple of weeks ago, you'll notice a homicide that occurred in our city back in 2008 was resolved this year. That gentleman is now spending 33 years to life behind bars. That is mainly because of the dedication of our officers, hard work, police work, from not only the patrolmen that responded to the scene but the detectives that were relentless in resolving this.

President Holzheimer Gail – Council, are you willing to extend the time? I know you're speaking on behalf of others, but your 5 minutes are up. Go ahead and finish please.

Det. Novitski – In closing, when deciding whether to pass this contract, realize that this contract was over a year of hard fought negotiation taking all these things into consideration. Neither side walks away from the negotiation table 100% satisfied. We feel we have come to a satisfactory agreement that both the union and the city can live with for three more years. We therefore ask you to vote to pass the contract as proposed. Thank you.

President Holzheimer Gail – Seeing no further comments, we'll move forward with legislation.

### **LEGISLATION**

#### **Res. 169-2012 (184-12) UDE Charter School**

A resolution granting a Use District Exception, pursuant to Chapter 1375.01(a)(3) of the Codified Ordinances of the City of Euclid, to New Day Academy, 8566 Barbara Drive, Mentor, Ohio 44060, for Permanent Parcel No. 647-19-001, to allow a charter school, K through 12, use permitted in a U-1, U-2 & U-3 (Single-Family House District, Two-Family House District, & Apartment House District) in a U6 (Industrial and Manufacturing District). (Sponsored by Planning & Zoning Commissioner ) (Approved to Council with recommendation for passage by Planning & Zoning Commission)

Councilwoman Scarniench moved for passage, Councilwoman Jones seconded.

Councilwoman Scarniench – I hope all of my colleagues will go along with this tonight. First of all I would like to make a motion to waive the third reading and go forward with the public hearing. As everybody knows, I like to give people a chance and that's why we went forward with the reading.

Councilwoman Scarniench moved to waive the third reading. Councilman Lynch seconded.  
Roll Call: Yeas: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail.  
Third reading waived.

Commissioner Beno – In that we have previously taken some testimony on this ordinance, I'll present an abbreviated report. On October 16<sup>th</sup> the Planning & Zoning Commission heard a proposal for this K-12 school to be located in an existing office building in the southwesterly area of 124 acre industrial park on Euclid Ave. The Planning & Zoning Commission recommended approval of the Use District Exception subject to three conditions which are included in this legislation. The applicant is present and both they and I will be happy to answer any additional questions Council might have.

Councilman Langman – To Chief Brickman or Service Director Bock, have we decided whether or not we'll put up school zone flashing signs and if so who will pay for those?

Director Bock – We have looked at it, I've seen the report from the Police Dept. I would recommend we put something up there. As far as who pays for it, I've looked at the State ordinances and codes and so forth and most of these items should be paid for by the school system, not the city. These school zones, school signage and so forth fall underneath those jurisdictions. I have not talked to the school as yet to see if they're willing to come up with some money to help put up the flashing signs. In the meantime, I have spoken with my Traffic Dept. as far as painting crosswalks and the school zone signs there. E. 250<sup>th</sup> Street really needs to have some type of school zone, to slow people down there and protect the children and crossing guard that will be stationed there. Especially these mornings which are dark at this time of year, I think we need to have something more than just some signs and a crosswalk.

Councilman Langman – Chief Brickman, were you going to make a comment?

Chief Brickman – I will be working with Mr. Bock in this. We do have some schools that are closed from last year and wanted to find out if the flashing signs might be available for use at this school. We have not had any in depth discussion on it up to this point.

Councilwoman Scarniench moved to close debate, Councilwoman Caviness seconded. Yeas: Unanimous.

Roll Call: Yeas: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail.  
Passed.

Director Pietravoia – Just to officially state for the record, that was the public hearing and if there was anyone who wanted to comment.

President Holzheimer Gail – Is there anyone who would like to comment on Item #1, Res. (184-12), we will take a public hearing just to make sure we're covering our bases. Seeing none. Do we need to revote?

Director Frey – You're vote is sufficient.

**Res. 170-2012 (197-12) CDBG FY 2013**

A resolution approving the Annual Action Plan for the FY 2013 Entitlement Year under the Community Development Block Grant Program of the United States Department of Housing and Urban Development as recommended by the Citizens' Advisory Committee appointed by the Mayor of the City of Euclid and authorizing the Mayor to submit said Annual Action Plan to the United States Department of Housing and Urban Development. (Sponsored by Councilperson Holzheimer Gail and Scarniench)

Councilwoman Scarniench moved for passage, Councilman McLaughlin seconded.

Director Pietravoia – I would like to start out by thanking the citizens' committee that has assisted us through the annual process. Each year we receive federal dollars from HUD and in determining how to use those dollars we assemble a group of, in this case we had six members, citizen advisory committee, two of which were members of Council, our Council President and Councilwoman Scarniench. I wanted to thank all the members that participated in all those meetings.

I'm not going to be able to talk a lot tonight. I thought I was the one who was going to be sneezing, but apparently it is the Mayor this evening, we have a couple of colds going around this evening so I apologize.

I'd like to recognize Brian Iorio who is our grants administrator. He has stepped up in the past year and done a tremendous job in organizing and coordinating the Block Grant program. He's here tonight to give a brief summary of the memo that Council received that indicates how the dollars are proposed to be spent by the citizens committee for the year 2013. With that I'll turn it over to Brian.

Mr. Iorio – 2013, marks Euclid's 39<sup>th</sup> year as an entitlement city. This legislation is the culmination of the CDBG Citizens Advisory Committee process. Committee is comprised of both Council members and residents of the city and is intended to review our past program performance and to prepare for the coming year. We are very appreciative of the participation of our committee members and their dedication to the Euclid community.

The process consisted of two committee meetings and two public hearings. The outcome of these meetings is the fiscal year 2013 Annual Action Plan and associated budget. For 2013, we have been advised to budget based on our 2012 allocation of \$875,500. The budgeted programs are as follows: Senior Programs \$220,000; Storefront Renovation Program \$85,000; Municipal Beautification Program \$47,500; Health Safety and Well Being, also known as the Weatherization program, \$290,000; Neighborhood Programs and Fair Housing activities, \$25,000; General Program Administration \$150,000; Planning \$5,000; EDCOR administration \$53,000. We expect \$75,000 in program income from the EDCOR revolving loan program.

The actual grant amount for 2013 is awaiting congressional approval and formula allocation from HUD. Generally we are informed of this amount in the spring of the program year. At that time a grant contract is issued to the city and it is returned by the Mayor in order to release our entitlement funds.

Each year through this process Council reviews and approves this resolution to authorize the administration to submit the Annual Action Plan to HUD. We respectfully request passage of this resolution so we can allow for the timely submission of the Annual Action Plan to HUD and continue to provide these services to the citizens of Euclid. Thank you and I'll be happy to answer any questions.

President Holzheimer Gail – I, too, would like to thank the residents and Councilwoman Scarniench and Brian and the staff from the Community Development Department that put the committee together. It is always very difficult to make those decisions because there are always more programs we would like to be able to do. But through the course of the years, the funds have been decreasing. They do fund very important programs in our community for those who are in need. I, too would ask for council's support but wanted to acknowledge the hard work that went into this. Any subcontracts, EDCOR or to some of the senior programs, often contract the home health aide service out. Those contract would come back specifically to council for approval. This is the action plan that is submitted for approval to HUD.

Director Pietravoia – We had streamlined the process in the last couple of years. We actually include those organizations that you just mentioned in the ordinance and they are approved at Board of Control but they don't come back to Council since they have been in place for many years and are fairly routine. Council agreed a couple of years ago to streamline the process in that way.

President Holzheimer Gail – Now that I look at Section 2, that is detailed very well. My apologies.

Councilman Langman moved to close debate, Councilman O'Hare seconded. Yeas: Unanimous.

Roll Call: Yeas: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail. Passed.

**Res. 171-2012 (198-12) Accept CAC Grant for Shore**

A resolution authorizing the Mayor to accept the Cuyahoga Arts and Culture (CAC) Project Support 1 Grant to support arts and culture programming at the Shore Cultural Centre, and to expend the grant funds to support those activities approved through the CAC grant. (Sponsored by Mayor Cervenik by request of CS&ED Director)

Councilwoman Scarniench moved for passage, Councilman Lynch seconded.

Director Pietravoia – I'm really pleased this evening to have Sarah Gyorki and Jim Sonnhalter here with us to report that they were successful this afternoon in hearing from the County about the grant that you'll be hearing about this evening and the dollar amount. I'll let them report as part of their remarks tonight.

You may recall, I know Council President and Councilman O'Hare in particular and a couple others have encouraged us to go after this grant and this is the first time we're successful at this level from the city's standpoint. I want to thank you for your support in encouraging this grant application.

I know through Shore, they have gone after a separate grant that the Board is eligible for and Sarah may want to comment on that as well this evening. With that, I'll turn it over to Jim Sonnhalter who did, along with Sarah did the bulk of the work in submitting the grant application. Kudos to both of them.

Mr. Sonnhalter – We didn't draw straws to see who actually named the dollar amount, but this has been a long road to hoe. This is Euclid's first time in applying for the project support money through Cuyahoga Arts and Culture. We had to go through a three step process to meet every benchmark for eligibility. First the eligibility check, secondly the Ohio Cultural Data Project survey and lastly the application itself that Sarah can speak to in greater detail. All to ensure and prove to the Cuyahoga Arts and Culture that the City of Euclid and Shore Cultural Centre are the type of organization that they want to fund. Sarah can speak to the Youth Art Series 2013 application.

Ms. Gyorki – This funding is going to fund expanded out of school time opportunities for youth in the City of Euclid, K-12, meaning it will be able to offer additional services and programs and events in all art forms. Dance, music, drama, visual arts with more public performances and show cases for the youth.

Ms. Sonnhalter – We attended the board meeting where they announced it today and Sarah applied for \$32,000 worth of funding and we're pleased to announce that we've received \$28,708 of that amount. With that we would respectfully ask for passage of this resolution.

President Holzheimer Gail – Thank you very much and congratulations to both of you.

Councilman McLaughlin moved to close debate, Councilman O'Hare seconded. Yeas: Unanimous.

Roll Call: Yeas: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail. Passed.

**Res. 172-2012 (195-12) Bargaining Agreement Dispatchers**

A resolution authorizing the Mayor of the City of Euclid to execute Agreements by and between the City of Euclid and the Civilian Uniform Police Personnel Organization, as exclusive bargaining agent for Police Dispatchers and Records Clerks in the Department of Police, to be effective January 1, 2012 through December 31, 2014. (Sponsored by Mayor Cervenik)

Councilwoman Jones moved for passage, Councilman Lynch seconded.

Director Frey – The Police Uniformed Personnel Records & Dispatch as we know them, we engaged in a number of bargaining sessions over several months. Came to the agreement that is before you this evening, which would be a 2% increase effective July 1, 2012 and a 2% increase for 2013 and a 1% increase for 2014. In addition there is an increase in the license proficiency. The license is related to the ability to access the LEADS system where they check on outstanding warrants and cases that an individual has both State and National databases.

The increase in the employee contribution for healthcare will be effective January 2013. At the same contribution level that exists for the other two bargaining units whose contracts have been approved and for the non-union employees. What I anticipate with the other bargaining units as those come on line.

In addition for new hires, in these two departments, they will be capped at no more than four weeks of vacation after 10 years of service and we'll have a reduction of three holidays of the listed holidays in their bargaining agreement. I would ask for Council's approval of this agreement this evening. This covers January 1, 2012 through December 31, 2014 and there is a retro-active provision that will have to be calculated and paid out as soon as possible.

President Holzheimer Gail – Any questions about the Police Dispatch and Records Room Clerk contract?

Councilman Lynch moved to close debate, Councilwoman Jones seconded. Yeas: Unanimous.

Roll Call: Yeas: Caviness, Scarniench, Jones, Lynch, O'Hare, Langman, Holzheimer Gail.  
Abstain: McLaughlin  
Passed.

**Res. (200-12) Bargaining Agreement Police Officers - FAILED**

A resolution authorizing the Mayor of the City of Euclid to execute an Agreement by and between the City of Euclid and the Fraternal Order of Police, Lodge 18, as exclusive bargaining agent for full time sworn Patrol Officers and all full time sworn Supervisory Officers, exclusive of the Chief of Police and the Executive Captain, to be effective January 1, 2012 through December 31, 2014. (Sponsored by Mayor Cervenik)

Councilwoman Jones moved for passage, Councilman Lynch seconded.

Director Frey – This contract in contrast to the one that was just approved has a 2% increase but that's effective January 1, 2012 through December 31<sup>st</sup>. That increase is 2% for January 2013 which is the same as the other bargaining agreements and 1% for 2014. Those increases also apply to the firearm proficiency consistent with a some time ago arbitration determination.

This group of employees will also increase the contribution for healthcare expenses by \$25 a month if this is approved effective January of next year. There's a switch in premium days, Easter will be removed from the premium holiday list, I'm sorry, the Friday before Easter will be removed from the premium holiday list and replaced by Easter. Because a number of the command staff do not work those holidays, there will be savings associated with that.

There will be a significant reduction in the amount of compensatory time that can be cashed out on an annual basis. Right now an officer can cash out up to 480 hours of compensatory time. That will be reduced for 2013 and 2014 to 240 hours.

Then for new hired officers, there will be a reduction and those are officers hired on or after October 1, 2012. There will be three less holidays associated with those officers time.

Finally at the end of career, an officer could elect to take up to ten weeks of paid time prior to actual official termination date. During that period of time, the officer would not accrue additional paid time such as vacation, holiday or sick time. There's an ability to use some of the accumulated time that would not then get paid out lump sum at the end of the contract. Although in truth, that time would be subject to pension payments both by the city and the officer where the lump sum payments are not.

That's the extent, there are some non-economic terms, some language agreements that we have included in the final version of the bargaining agreement that I did not detail here. They deal with issues like uniform selection, what's a grievable offense and issues like that, that were certainly acceptable to the Chief as the Administrative Officer for the Department and that we will include in the final version of the contract. I'm happy to answer questions.

Councilman Langman – First of all I would like to thank both the administration and FOP Lodge 18 for rather long negotiations. I know these are never easy and I do appreciate both sides willing to discuss the matter. For me, there's one issue that for me will prevent myself for actually voting for this and that's the item of parody, I think that's very important as we look at all of the contracts that come before the Council. Unless that matter can be worked out so that it is equal across the various bargaining units, I'll be voting no on this matter.

Councilwoman Scarniench – I've sat in this room for probably close to 30 years and I have always supported our men in Blue, our Fire Dept. actually every union in the city because my husband was a union member and I know exactly how it works and the way it works. Unfortunately I will also be voting no for the very same reason Councilman Langman said it. Right now we're working on a budget that's in a deficit mode and we've just approved a third contract and they're all very similar. I just feel it is very important that across the board we're doing the same thing so I will be voting no on this.

President Holzheimer Gail – Thank you Det. Novitski for your remarks and for your work with the administration to get us to this point. When we started our budget discussions, union contracts always come up and we talk about that. One of the things we started knowing that all of the contracts were up this year, Council was involved to say this is what we think is important and one of the primary tenants was parody in the rate increase. We understand that not all of the contracts are equal. I would very much like to see the limit of the vacation and some of the other items in every contract. We realize that's not in every contract. For that matter, primarily the consideration of parody, I too will not be supporting this but I certainly look forward to continued discussions. We certainly value and respect the work that you do. We do know it is very difficult and we do appreciate the work that you do.

Director Frey – I don't mean to cut into any of the council members' time, I did want to indicate that I spent a long time, part of that with the Mayor, part of that with Chief Brickman, in meeting with this negotiating team for the FOP. They are a very professional group of individuals who I know we're going to have honest disagreement for obviously a significant amount of agreement here. But they've been very professional in their dealings with the city. As we've talked about this depending on the outcome this evening, we know that we have to reach an agreement. What I have talked to their counsel about is how we go about that. We will obviously sit down again and see if we can't come to an agreement again, depending upon the outcome here this evening.

But rest assured we will have an agreement and this group of dedicated men and women will continue to serve at a high caliber for the city.

Councilwoman Scarniench moved to close debate, Councilman Langman seconded. Yeas: Unanimous.

Roll Call: Yeas:

Nays: Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail.

Abstain: Caviness

Failed.

**Res. 173-2012 (185a-12) Special Permit Shutters**

A resolution granting a Special Permit Approval pursuant to Chapter 1387.03 of the Codified Ordinances of the City of Euclid to Makhoul Julien, 3496 Hetzel Drive, Parma, Ohio 44134, to install five (5) rolling shutters for his business located in a U4 Use District, 25911 North Lakeland Boulevard, Euclid, Ohio, Permanent Parcel Nos. 643-25-003, 007. (Sponsored by Planning & Zoning Commission) (Approved to Council with recommendation for passage as amended) (From Safety Committee)

Councilman Lynch moved for passage, Councilman McLaughlin seconded.

Commissioner Beno – On October 16<sup>th</sup> the Planning & Zoning Commission heard the request for a special permit for the approval of rolling shutters at 25911 North Lakeland Blvd., doing business as a Shell service station and convenience store. Also at our Council Safety Committee meeting last week, there was an amendment added which was to restrict the hours of use of the shutters if approved to between the hours of 12 midnight and 5:30 AM.

The Planning & Zoning Commission considered evidence of four breaking and entering incidences at this business in a nine month period. The Commission also requested that a condition be added which would require the rolling shutters and storage box be installed inside of the windows and building façade. Based on these factors the Commission recommended approval to the Council. The applicant is present here if there are any additional questions.

President Holzheimer Gail – We did have a committee meeting, so I don't know if there's a report to be provided from the committee meeting, I don't know if it is necessary or questions from Council.

Councilwoman Jones – We did discuss this at the Safety Committee meeting in some detail and questions were brought up and Mr. Julien, thank him for coming up and explaining his situation. We did discuss it at some length. We also talked about a moratorium on this issue so council can come up with what's the best permanent resolution. I won't say permanent but what's the best resolution going forward so that we don't have a mish-mosh of different types of shutters or window coverings for businesses that are in this type of situation.

It came out of the committee meeting to come back to Council to discuss and talk about more if need be. That's the status of the committee meeting.

Councilman Lynch – I think there's a couple of issues here. The first is the immediate need of a business person who has a break in three times and thinks this is a real practical solution to address it. I think when we just look at the facts of that case by itself, my impression is that a number of us are pretty sympathetic to that. I think us as a city who are here to serve our businesses and our residents, it make some common sense to try and accommodate that.

The second issue is the longer picture for what this is going to mean for our city. That's the question I wanted to put to Law Director Frey. I think there's some confusion and because of past experience some appropriate apprehension that council has about what precedent does by granting an exception to one person and what that means in the future.

I'm going to explain how I understand the legal standard and hope Director Frey you can comment on it. It was brought up at the last council meeting that if a court reviews this exception and anyone else who applies for it in the future, the legal review is a rational basis review. Which essentially means that, as long as Council has some reason, any reason that you can articulate why we choose to act in the way that we did, then we're on solid legal standing to grant permission for one property owner and not to grant it for the other. In constitutional law, the joke is when the review is rational basis then the government wins. Because essentially what rational basis means is just that, is it rational, is there any reason whatsoever that you acted on that you can find in the record which is correct.

My hope is to settle that, perhaps the understandable because of past experience, I'm not sure why. But settle the apprehension that in granting permission to Mr. Julien are hands are somehow going to be tied in the future and we're not going to be able to make our own decisions with someone else. Where to me this is the ultimate function of a local government body that were the eyes and ears of a community, we have a business owner who has a real need and if we feel in this case it is appropriate to accommodate that need, it doesn't bind us in any way for a different owner, under a different set of circumstances. Am I incorrect in this assessment that as long as we're able to find some, any, discernable reason on the record which makes Mr. Julien different in any way from another property owner, are our hands going to be tied or are we going to be able to continue to make our own decisions as a local government body.

Director Frey – This is while it resides in our rezoning chapter, the use of roll down shutters, truly this is a business regulation item and not a land use item. It could just as easily be in our business regulation portion of our codified ordinances. I agree Councilman that because this is not a compelling issue for a property owner, a rational basis would be the appropriate standard that a court would review our actions.

The difficulty with our existing code is it gives no guidance to either the Planning & Zoning Commission as first body of review or Council in its role as a confirming or rejecting the Planning & Zoning's recommendation. That's the basis for the later piece of legislation tonight to place the moratorium so we can refine that process.

I would agree, so long as we can find that the Council as a legislative body can find a legitimate rational basis for denying the use of shutters or allowing the use of shutters, the one case does not predetermine the outcome in the next case. Again, I'm encouraging regardless of the determination on this piece of legislation that the moratorium be enacted so we can create some best practice factors to look at when making that determination. You're analysis I think is spot on here.

Councilman Lynch – That is the third issue of actually creating this code and I have to agree with that glaring need. Again, the concept of, even a legitimate rational basis, really it just means rational basis. It is a reason. It is not really the province of a court to figure out what we think is legitimate or not. As long as we have a reason then we're free to continue to act and make the decisions that is our area of power where we can make these kinds of decisions.

My only other final question is in relation to the moratorium piece, if we vote yes on this resolution and yes on the moratorium, is Mr. Julien going to be able to install these shutters?

Director Frey – Because his application was filed prior to any change in the code and prior to the moratorium, it is the existing code that would apply to his case. Council can confirm the allowance that Planning & Zoning recommended or deny it, it stands or falls on its own. His application is under the current code and the moratorium will have no impact one way or the other.

Councilman Lynch – I understand we may all have our own different opinions here but I think this is an opportunity where we can stand up for a business owner in Euclid and also stand up for our decision making power as a local legislative body. For that reason I'll be voting yes.

Councilman O'Hare – One quick comment that I hope is not lost and I too support this. What I also support is Mr. Julien, personally, professionally, honestly if it would have been me on that side, when you came with your arguments awhile back, I think I might not have been as reserved as you were. You presented a rational argument but you also understood that we had a process to go through on our side. I thank you for your patience, I thank you for your business, a well run business in the City of Euclid and your commitment.

Councilman McLaughlin – Yes I was in favor of this the last time it came through. I recently was in Mr. Julien's place of business and I saw there are nice recesses for these inside the building. The question I have when I read this is, this Resolution stays with the building and not necessarily with Mr. Julien. If he decides to sell the place, does the same owner have to abide by this Resolution, the new owner?

Director Frey – In our very quick huddling, it would stay with the building. A subsequent owner would be bound, if they were going to keep the shutters, would be bound by these same restrictions.

Chief Cosgriff – When we first began to speak about this I expressed the Fire Department's concern in that this will impede us gaining access to this building, in case there was a fire in the building after hours and the shutter was down. I recommended that as a requirement, the owner would be responsible for putting some type of a keyed lock box outside the building to allow us to gain access.

My question would be for the Law Director, it doesn't say that in this legislation. Would it need to be amended to make that as a requirement for a lock box of some sort for Fire Dept. access?

Director Frey – Yes, that would need to be; make this a "b" version if we were to include that in section two as an additional condition and I think it would be an outstanding idea and we ought to include that.

Councilwoman Jones – I am sympathetic with Mr. Julien's business discussion for the installation of the shutters. But I'm also concerned of the outcome because we have, at least a couple of years ago, had some businesses that wanted to do this same type of thing and the outcome of that was not favorable in the business decision.

After the moratorium is in place, we come up with whatever the decision is on the likable decision for window coverings or whatever. My concern is that the business who wants to put in shutters because maybe that's the most economic way to go, would have a way to appeal that and be able to put the

shutters in. I'm concerned for the different types and varieties that could come out of an appeal process. If we don't go forward with the moratorium and get that in place first. Going ahead with Mr. Julien's shutters, the moratorium, I'm just concerned if another business could appeal and say we gave the permission for the one. I know Councilman Lynch just went through the statements he made, but I just have a concern about that. In the past when we put moratoriums on different things, something has come back and bit us in the end for something that we didn't have in place.

My question is, can that happen? Maybe it won't happen, but I'm just wondering can that happen if a business wants to come back and put shutters in after the moratorium?

President Holzheimer Gail – Are you asking about a business who previously had asked to do something similar but was not allowed?

Councilwoman Jones – A business after we go through the moratorium period, we come up with whatever the solution is at that time. We have legislation to state whatever the rules and regulations are. Can another business come back and say we granted it for this one business, why can't you grant it for me and my situation could be the same, number of break ins or whatever?

Director Frey – The reason why they're not the same application or the subsequent owner can't rely on the determination in this case is because prior to their application we've first placed the moratorium, or I presume that will happen this evening. Secondly then adopted factors that are to be considered in making that decision. The law changed during that intervening period of time so the application that was here in this case is no longer the application process that would exist. It is a new process that any business owner who comes in and says I want to have some sort of security device, they're going to have to go through this new process. They can't avail themselves of that prior decision that was made while a law was different, or our city regulations were different.

They could certainly argue it, I suppose. But it has no legal bearing because the law changed and it changed prior to their application.

Councilwoman Jones – My other question related to that, does that also cover other applicants in the past who have applied but were turned down. They would have to go through a new application process under the new rules.

Director Frey – That's correct. They would have to go through a new application that would be governed by the new regulations or factors that would be imposed. They had a period of time in which they could have taken an appeal from the decision, that didn't happen. They could have reapplied after a year went by and as far as I know that didn't happen. Their application, even if they had applied three years ago and applied again under new regulations or new factors, that new law would apply to their case. They would have no benefit to having had been sometime earlier having had applied. Would have no consequence on the decision making.

Councilwoman Jones – We're talking about this because there's a situation that came up with a business who wanted to apply for this and now we're talking about the moratorium and putting something in place. I still have that uncomfortable feeling about after. Even though I am sympathetic about Mr. Julien's business and the problems that he's had with it, I'll be voting no on this until after we pass the moratorium and come up with a better solution.

Councilman McLaughlin – Chief Cosgriff would you require a key for this lock box be registered with the Fire station?

Chief Cosgriff – Yes, that would be our requirement. We have a number of facilities in the city that have Knox boxes. Knox is a brand of lock box. They have a box and we are the only ones with keys to the box. We control what goes in the box and it would give us keys to operate in buildings or operate elevators and that kind of thing.

Councilman McLaughlin – I move to amend this Resolution (185b-12) to read in Section 2, after 5:30 AM and have an outside lock box installed with a spare key given to the Euclid Fire Dept.

President Holzheimer Gail – Is that appropriate language Director Frey, or you'll come up with something. Keyed lock box that meets the requirements of Euclid Fire Department for emergency access.

Director Frey – That will be better. We'll want the Fire Dept to approve the lock box installation.

President Holzheimer Gail – Motion to amend to approve as a condition a keyed lock box that meets the requirements of the Euclid Fire Dept. for emergency access.

Councilman O'Hare – I'm wondering if it isn't appropriate that we don't allow Mr. Julien because this is new to him, as was new to us too, if this is something that he's willing to do and go ahead with the box and so forth. A secondary question, about the boxes Chief, what's the determining factor, do businesses opt-in to do this or are there some business based on a list of criteria that we require it? I can see for example all service stations that sell gasoline that wouldn't be a bad idea to require them. I know in this case it comes to your attention and you want to require it because of the rolling shutters and there is an easy access by breaking through a window.

Chief Cosgriff – Most businesses that install these do it of their own volition and then notify us that they do have a Knox box. We do have tools to get into any business, but we would like to do it as rapidly as possible but also with as little damage as possible. Typically businesses do it on their own. This is a different type of installation where it would be time consuming as well as expensive to gain access via other methods.

Councilman O'Hare – Do we have other businesses where we are the party that requires it or other buildings?

Chief Cosgriff – I'm sure that we do, I can't think of them off the top of my head.

Councilman McLaughlin moved to suspend the rules if Mr. Julien would like to comment. Councilman Lynch seconded. Yeas: Unanimous.

President Holzheimer Gail – Mr. Julien if you would come up for a moment and let us know if you have any objection to the requirement of having a keyed lock box that would provide access to the Fire Dept. in case of an emergency.

Mr. Julien – I don't have any problem, we can provide him a box and key no problem.

President Holzheimer Gail – There's a motion on the table to amend. Is there a second?

Councilman Langman seconded the motion to amend.

Councilwoman Caviness – Just out of my ignorance, should we vote on the resolution first and then the amendment afterwards depending on the results of the resolution?

President Holzheimer Gail – The amendment would come first. This is a roll call, just on the amendment to add the requirement of the keyed lock box for the Fire Dept.

Roll Call on Amendment:

Yeas: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail.  
Amendment passed.

Councilman McLaughlin moved to close debate, Councilman Lynch seconded. Yeas: Unanimous.

Roll Call: Yeas: Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail  
Nays: Caviness, Scarniench, Jones  
Passed as amended.

**Ord. 174-2012 (194-12) Designate CT Consultants, Inc.**

An emergency ordinance authorizing the Director of Public Service to designate CT Consultants, Inc., as project design engineer and construction manager for the MBR Wastewater Treatment Project for installation within the existing WWTP Tankage. (Sponsored by Councilperson McLaughlin)  
Councilman McLaughlin moved for passage, Councilman Langman seconded.

Director Bock – This is something that was missed on our application. An ordinance that was at the last meeting and was passed by Council. I did answer the one question concerning this ordinance as far as if the opportunity or reason would arise later on if a change could be made to either the engineering firm or the project management. As I explained, if there is a reason that would happen, of course it might cause a slight delay but changes could be made down the line.

Councilwoman Scarniench moved to close debate, Councilwoman Caviness seconded. Yeas: Unanimous.

Councilwoman Jones moved to suspend the rules, Councilman Lynch seconded. Yeas: Unanimous.

Roll Call: Yeas: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail.  
Passed

**Res. 175-2012 (201-12) Amend code Discharge Regulations**

An ordinance amending Section 921.07 of the Utilities and Public Services Code of the Euclid Codified Ordinances adopting illicit discharge and illegal connection control regulations. (Sponsored by Councilman McLaughlin by request of Service Director)

Councilman Langman moved for passage, Councilman O'Hare seconded.

Director Bock – This is an upgrade to our storm water ordinances as part of our municipal separate storm sewer program. This probably should have been done a couple of years ago. It is a housekeeping matter that has been neglected for awhile. Basically what this is doing is preventing the illegal dumping of material into our storm system. Illegal connections into our storm system. Sanitary being tied into the storm and so forth. A question was raised, do we know of any in the city. There are some in the city, where they're at, we're not quite sure. We have found three this year that we've made corrections to and made the owners of the property correct. We have had for years a t-inspection program when people have sewer work done. We will test to make sure those lateral lines and sewer lines are working properly and there are no illegal connections. If we do find an illegal connection of sanitary into the storm, the homeowner is required to make that repair at that time.

It does not address for the most part, storm water entering the sanitary sewer. This is infiltration, it is not necessarily a good thing, but it is something that for years, almost every house in the city, the footer tile around your house in 80% of the homes it dumps into the sanitary sewer. Only because the basements are lower than the storm sewer. You can't drain it upward, so you allow it to be in there. It is such a minuscule amount of water that it is something we've always grandfathered or waived when we have to. Obviously if we can make it tie in correctly we do so.

This is just an update of our current ordinances. Puts a little teeth into the ordinance and in some cases allowing us to handle that. It is a requirement of the storm water program and the Consent Decree as part of the MS 4 and our C-MOM program.

Councilman Langman – Director Bock, I want to make sure I understand. If a private property has a pipe that carries both their storm water and sanitary and it is tied into the storm system, that would be covered by the update and this ordinance, is that correct?

Director Bock – That is correct.

Councilman Langman – If it is tied into the sanitary system, would that be covered under this or not?

Director Bock – If it is a combined sewer, one pipe coming from a house, I'd say 99% of the time it is going directly to a sanitary that there's either no storm sewer on the street or the storm sewer is placed in after the homes were built and the houses weren't tied in. Unless there's a substantial improvement made to the property, we would not require the homeowner to tie that separately. If they do make a substantial improvement to the property, then of course we would have them separate their storm water and their sanitary water and tie into the storm sewer.

Councilman Langman – What is a substantial improvement to the property? Waterproofing?

Director Bock – Not even necessarily waterproofing I wouldn't consider. If they're going in and rebuilding walls or putting on additions, something in that case, then it is obvious we would want any additional storm water not going into our sanitary system but going into proper storm system, especially if there's a storm pipe available to them.

Councilman Langman – Thank you for the clarification.

Councilman McLaughlin – If they do an addition, is that addition only if it exposes where the tie-ins where? If they're building an addition on the other side of the house?

Director Bock – I have in the past required people to tie in additions on the back of the house, wrap the pipes around and tie them into the storm sewer. If you've got an addition that's 20 x 20 or 24 x 24 addition going on at the back of the house, that's a substantial amount of storm water coming off the roof and it needs to be tied into a storm sewer. Our ordinances currently require that downspouts and roof drainage and so forth be tied into a working storm sewer. Unless there's a very good reason why it can't be, I'd be very reluctant to waive that requirement.

Councilman McLaughlin – You mentioned this gives some teeth to our current ordinance. I've read this thing several times and where did we get the language and how do we know that it complies with what we're trying to achieve in the Consent Decree?

Director Bock – We received several draft copies of ordinances from other communities as well as from the EPA and the storm water management people. We've gone through those ordinances and selected the one that best suits what we feel suits our city and our situation and that's the ordinance we've used. It could be a combination of a couple of different ordinances in some cases.

Director Frey – This came from the Chagrin Watershed District and it was approved by the Ohio EPA.

Councilman O'Hare – Director Bock, do we think for any violations that are currently out there, are they mostly commercial, industrial, residential or do we not know?

Director Bock – The most recent ones that we've located were a combination of all three. We've had Dille Road, East 204, we had several cross connections. We have an outfall sewer to Euclid there, our testing showed high levels of contaminants entering Euclid Creek. We were able to trace it back to 204 Dille Rd. We made those improvements, we found an SSO that nobody knew about. We made those corrections. That outfall has greatly improved.

There are two other outfalls located in the same area of the creek that come from Euclid. Regional Sewer recently did some testing for us. We were able to trace back to contaminants coming from Indian Hills apartments. We found contamination where a sanitary line was inadvertently tied into a storm sewer and dumping into the storm sewer which went to Euclid Creek. We were able to get Indian Hills to go in and make those corrections there. There was also another apartment building on Euclid Ave. that we found a cross connection. The cross connection actually occurred on the city side. Our city crews went in and made that correction.

As we find them, 201, we recently were doing waterline work over there. We found a house lateral that had been broken by a Cleveland Water crew several years ago and never repaired. That sanitary connection was filling the trench line entering the storm sewer and going to the outfall there. We were able to make that correction during the construction. We find them both on city property, on individual homes as well as apartments or industrial.

Councilman O'Hare – It sounds like we have to learn a new acronym here in addition to SSO's and CSO's, when you've got wastewater forensics here, it is kind of a CSI or something like that. Are we getting help in doing this because I see there's a requirement for monitoring. I know it is a requirement to do this and you mentioned cooperative with Northeast Ohio Regional Sewer District. Is there one individual who is in charge of this, or department, special equipment needed? Is this being funded by some of the funds from the recent legislation to meet the Consent Decree? Okay, that's a limit of questions I can ask in one.

Director Bock – We have been doing testing on our own. With the waterproofing projects, anytime someone does sewer work, we dye test the sewers to make sure they're working properly and they're tied in properly. We also pay the County Board of Health to do testing at our outfalls. Our outfalls are tested on an annual basis and we receive those testing sample results. In addition to that, under our Consent Decree we have mandated under the C-MOM program, where we are going to have to do cleaning, filming of lines, testing and documenting all that information. That's all part of the Consent Decree on top of that. That will be done by our Sewer Dept. as well as Waste Water Treatment lab personnel and so forth.

Councilman McLaughlin moved to close debate, Councilman Lynch seconded. Yeas: Unanimous.

Councilman O'Hare moved to suspend the rules, Councilman Langman seconded. Yeas: Unanimous.  
Roll Call: Yeas: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail.  
Passed

**Ord. 176-2012 (202-12) Amend code Pretreatment**

An emergency ordinance amending Section 923.02 of the Streets, Utilities, and Public Services Code of the Codified Ordinances of the City of Euclid relative to pretreatment regulations governing the sewerage system and sewage pumping treatment and disposal works of the City, to adopt the 2012 "Industrial Pretreatment Enforcement Response Plan and Penalty Policy 2012" and the updated Pretreatment Regulations, Appendix A-1 of Section 923.02. (Sponsored by Councilman McLaughlin by request of Service Director)

Councilman McLaughlin moved for passage, Councilman Langman seconded.

Director Bock – I'm going to turn this over to Supt. John Hall. I don't want him to feel left out this evening.

Supt. Hall – All this does is in 2007 the EPA identified 13 rule changes that pertain to the pretreatment program under the Code of Federal Regulations. We just had to adopt these and make sure they were consistent with our ordinances and the permits we provide to our industries. That's really what it was.

We had out of the 13, we had to change roughly five of ours in our permits. Some of it was just adding language, some of it was actually making sure the industries had control programs if they did have a discharge. They had to have an actual written SOP on site that would spell out exactly what they should do should there be a discharge.

Councilwoman Scarniench moved to close debate, Councilwoman Jones seconded. Yeas: Unanimous.

Councilwoman Caviness moved to suspend the rules, Councilman Lynch seconded. Yeas: Unanimous.

Roll Call: Yeas: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail.  
Passed

**Ord. 177-2012 (196-12) Board of Health**

An ordinance authorizing the Mayor of the City of Euclid to enter into a contract with the County of Cuyahoga, District Board of Health, for various health services for the City of Euclid for the year 2013. (Sponsored by Mayor Cervenik)

Councilman Lynch moved for passage, Councilman McLaughlin seconded.

Mayor Cervenik – This is our annual contract with Cuyahoga Board of Health. They do all sorts of health services for us including baiting for rabies, inspecting restaurants. The price is the same as the prior year, they held down the line. It is something we do and it is a service we receive that is very much needed.

President Holzheimer Gail – Mayor, would we have to provide those services if we did not contract with them, would we have to provide for them ourselves?

Mayor Cervenik – Not only would we have to provide them, but it would be very difficult for us to provide them for \$187,853.

Councilwoman Jones moved to close debate, Councilman Lynch seconded. Yeas: Unanimous.

Councilman O'Hare moved to suspend the rules, Councilman Langman seconded. Yeas: Unanimous.

Roll Call: Yeas: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail.  
Passed

**Res. 178-2012 (203-12) Moratorium Shutters**

A resolution placing a temporary six month moratorium on the installation of any type of steel windows or door guards, folding gates, grating or steel bars placed across doors or windows in a Class U4, U5, U6 or U8 Use District, as regulated under Section 1387.03 of the Codified Ordinances of the City of Euclid, in order that the Administration and Council of the City of Euclid evaluate and decide factors for consideration in determining whether to issue a permit for such security devices. (Sponsored by Councilman Langman)

Councilman Langman moved for passage, Councilman Lynch seconded.

Director Frey – As we talked in the Safety Meeting, we are proposing this moratorium for a period of six months. Councilman Langman asked for this legislation and it is an appropriate exercise in the legislative process to impose that period. I did want to report, Mr. Beno was here earlier, he has received information from the Cuyahoga County Planning Commission that had a list of regulations communities from around the country, it actually came from the American Planning Association, I believe. It had a list of regulations for these kinds of devices. We will get into each one of those communities that was identified in there and look and make a list of potential factors. We are underway with trying to come up with guidelines if you will for the utilization of these kinds of security devices. I would ask for your support, I'm sure the Councilman has some comments as well. I think it is a prudent approach to place this moratorium and give us an opportunity because these are clearly not preferred in the community.

Councilman Langman – First of all, thank you Law Director Frey for drafting this up. Just one technical question, assuming we pass this tonight, when will it actually go into effect?

Director Frey – I'm assuming the legislation will be signed tomorrow, so it is effective tomorrow or tonight if it is signed tonight. Whenever the legislation is signed, it is effective.

Councilman Langman – The Law Director covered it in detail. I think it is worth noting that our current code was passed in 1978. Prior to that, I'm not sure the city had any regulations at all. As times change and things evolve, it is prudent to update our code. The application by Mr. Julien spurred all this and I think the process should be a fruitful one like it was for the internet café moratorium that we had and awhile back the free-standing used car lot moratorium. That enabled us to update our code and go forward in a clearer way. I hope everyone can support this. Thank you.

Councilwoman Jones – We had some discussions about this in the Safety committee meeting. I look forward to getting this moratorium passed and having further discussions in future Safety Committee meetings. I don't want us to come up when the six months is over and we haven't done anything. I will be scheduling a Safety Committee Meeting probably sometime, depending on when resources are available, December or January so we can get some discussions. I know Chief Brickman, Sgt. Knack had mentioned that he does have some information that he wanted to share as well on what he uncovered at the training he was attending.

Chief Brickman – That is correct. I did speak with Sgt. Knack and he did have some ideas. I also spoke with Commissioner Beno and said that I would like for him to be notified of any type of meetings involving this discussion so he can participate in those.

Councilman Langman moved to close debate, Councilwoman Jones seconded. Yeas: Unanimous.

Roll Call: Yeas: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail.  
Passed

**Ord. 179-2012 (199-12) AT&T Cell Site Lease**

An ordinance authorizing the Mayor of the City of Euclid to enter into agreements with AT&T Mobility ("AT&T") that provides for a lump sum payment of \$210,000 in exchange for a thirty-five (35) year access easement to Md7, a cell site lease management company that has partnered with AT&T, and all future rent payments of the AT&T site on the communications facility located at 545 East 222<sup>nd</sup> Street, Euclid, OH 44123. (Sponsored by Mayor Cervenik)

Councilman McLaughlin moved for passage, Councilman O'Hare seconded.

Director Frey – We were approached several months ago by a representative of this company, Md7 on behalf of AT&T indicating that they were reviewing their current cell site locations and trying to gauge our interest in selling, if you will, the future lease payments for a lump sum payment. So that Council is aware, we currently receive just over \$19,000 a year for that cell site from AT&T. That's on the lattice tower that is in Memorial Park behind the police station. This agreement would provide a single payment in exchange for providing AT&T and Md7 this 35 year access agreement.

One of the factors in our review and consideration of this and why we are proposing this legislation to City Council tonight, is as you recall that tower was built by GTE Mobile Net, they don't exist any more. GTE Mobile Net was subsequently acquired by ALLTEL. ALLTEL doesn't exist any more. They were acquired by Verizon. Verizon abandoned the tower and removed their equipment and abandoned the tower to the city.

Not to long ago AT&T was in very serious discussions with T-Mobile to acquire the T-Mobile cell business. T-Mobile is a second carrier on that tower. I was particularly apprehensive when I was hearing those conversations because I know, given the experience that one of those antenna arrays would be removed if there was a merger.

We had a similar situation on our Paul Sierra Field, Diamond 1 in Memorial Park. There's actually a mono-pole cell tower that also serves as one of the light standards. We're going to get another one, we're going to get another one of those kind of leaning telephone poles removed in favor on a Nextel monopole and another light bank. Sprint bought Nextel. While we had all of that, we had the easements prepared, everything was ready to go and all of a sudden that deal went out of existence.

This is a pretty fluid business and I've sent you the information on this tiny cube, light radio cube. The CNN Money Report that I sent out and we are told these will start being deployed in Manhattan for use with antenna but to better direct cell traffic. Director Bock indicates that Cleveland Water is already starting to deploy these for their remote meter reading. It is coming and it is coming here. What it will do

as I understand it and I don't pretend to be a technology expert, my kids would chuckle at the mere notion of that. It will reduce the number of antenna sites that are necessary because these small very deployable devices will take the place of many of the antenna. We want to position this antenna so that it stays in existence because not only do we get revenue from it but it also covers and carries our transmitting equipment. I believe the FBI is on that antenna and the Cleveland MetroParks are on that antenna. There's a need to keep that functioning. With the changing technology, we think this is the right time and the right move. We've been approached before in buying out our leases. They never made financial sense, they weren't offering enough. This one appears with our analysis to be a good deal. As the Mayor has indicated in our conversations, this would be a good opportunity to direct these funds to the Recreation Capital program for some of the much needed work in the Rec Dept. I'd be happy to try and answer questions and if I can't answer them, get you the information. If there are many questions that I can't answer, then I would ask that you put this into committee so we can get that information and properly make a decision here.

Councilman O'Hare – Regarding the many questions Director Frey in putting this in committee, is there a danger, is this time-sensitive that if this were to pass two weeks or a month, AT&T is going to pull the deal or the deal will go to somebody else to decide?

Director Frey – I don't think so. In my conversations with the representative from Md7, we've had this for a couple of months and I wanted to go through their documentation and so forth. I told him in my conversation with him last week, that it is possible that this will go into committee. I don't think it is a deal breaker at all.

Councilman O'Hare – You're right, this is totally up in the air to try to place a valuation on this. It is like placing a hedge bet on a stock and throwing a derivative in. You can come up with the answer of whatever you want. On balance, I think it represents a pretty nice opportunity. I'm assuming that by AT&T buying this out, they're not getting exclusive commercial use of the tower? So if another carrier came up, there's Dish Network talking about getting into the mobile business. If they wanted to use the tower, they have the right to do that and we can get revenue from them?

Director Frey – That's correct. We control the tower, save for the space that we have leased to these different carriers. We have three right now. We have AT&T, T-Mobile and there's a local carrier Revol, it had another name at one point, but it is a Cleveland-based cell carrier that's on that tower. We had a fourth at one point, but they're gone. We have plenty of capacity on that facility.

Councilman O'Hare – The other two carriers we receive comparable sums?

Director Frey – They're all roughly in that neighborhood. The one that we got very little from was the GTE Mobile Net, ALLTEL, Verizon and that's because they actually constructed the tower. They had that capital cost that was the first of the agreements.

Councilman O'Hare – You never want to see anybody go out of business, but as long as they did that and it carried on, it worked out okay. Regarding the funds, we're not voting tonight on where these funds will be directed? Certainly it is making use of our geography and our real estate and I assume there's some maintenance associated with this and those are some costs. It is located in Memorial Park within that footprint. I certainly wouldn't want this used for expense in 2012 or 2013 expense. I agree it should go to some sort of capital fund because this is sort of found money if you will, it is a one time thing. I'd like there to be some dialogue of the appropriate use of the funds and I assume that will come after the fact at another bit of legislation yet to come. Is that correct?

Director Frey – That's correct. There is no designation in this legislation for placement of those funds in any city account at this point. That would be a subsequent determination perhaps through the budget discussion process. If this were approved prior to the budget process, that might be an appropriate time to determine where those funds should be deposited. The thought, as we've talked about recreation and the recreation capital needs, this found source might be an appropriate use.

Councilman O'Hare – If you felt by going to committee, we'd gain some new intelligence or bargaining leverage or something, I'd be open to that. But I trust you've taken this as far as it can go and I'm happy to support it. The only new intelligence would be on my part if I actually had to learn some of the technology. If you had a question that you needed me to get an answer for, I would certainly do that and that might be the appropriate reason to put it in committee. No, I don't have any other compelling reason.

Mayor Cervenik – The figure that is stated here is not just some number that is pulled out of the air. It is based on present value of future stream of revenues and the assumed interest rate and that's where they came up with the \$210,000.

Councilman Lynch – Point of clarification about the language in Section 1. The last clause, on the second line, where it says, all future rent payments of the AT&T site. That's intended to mean the future payments within that 35 year period, correct? So once that period is over they're not able to have that easement some how rent free?

Director Frey – That's correct. If cell communications existed in that format and there was still a need for that tower in 35 years, that's right, those revenues would come back to us.

Councilman Lynch – I just wanted to make that clear as a matter of record. Thanks.

Councilman McLaughlin – When that cell tower went up, I thought it was an eyesore, I never quite liked the way it looked. What happens if technology changes and we decide there's no need for a tower in 15 years, do we have to give this money back?

Director Frey – No, there's no risk to us. It is a one time payment. They assume the risk that they're no longer needing to use a cell tower. Part of that agreement is that we carry none of the risk. That's one of the reasons that argues for us to go forward with this is we're avoiding the risk of that type of technology becoming obsolete.

Councilman McLaughlin – If we have a micro-burst and the thing goes down in flames?

Director Frey – We have insurance on the structure. We have business interruption insurance that would cover our loss of revenue from the equipment. Obviously we have a city use and a governmental use with the FBI and the MetroParks that we would have to replace. My sense is the carriers that are on there now would find different sites, they wouldn't want to wait for us to re-install a structure to carry their equipment. These are spaced in a way to give them maximum coverage. Perhaps they would want that reinstalled and maybe the technology is better that you could use a monopole to get you as high as you needed to with that. I don't know, that's some other discussion.

Councilman McLaughlin – Looking at that structure, I'm sure it is going to be around for at least 35 years the way it is built so I'll be supporting this legislation.

Councilman McLaughlin moved to close debate, Councilman Lynch seconded. Yeas: Unanimous.

Councilwoman Jones moved to suspend the rules, Councilwoman Scarniench seconded. Yeas: Unanimous.

Roll Call: Yeas: Caviness, Scarniench, Jones, Lynch, McLaughlin, O'Hare, Langman, Holzheimer Gail. Passed

#### COMMITTEE OF THE WHOLE

Mr. Christopher Michael Litwinowicz – 21970 Morris Ave. Going back to what you just talked about \$210,000 in exchange for a 35 year lease. Does the Council understand that's a \$6,000 profit? I came here also today to let the public know that registered voters in the City of Euclid is 15,879. So why was there 20,000?

The provisional ballots that's being counted have up to a couple more weeks, they have 21 days to certify the election. There's a total of 1563, with 50 that came in the mail that comes to 1613. At the polls, by precinct, it comes out to 2,667 votes. Absentees come out to 8,409. The yes votes is 3,867. The no votes are 4,542. Unofficially Issue 109 presented through the media 10,346 yes votes to 10,327 no votes. If you've got 15,000 people registered to vote up to 30 days before the election, how did they get extra votes?

I know this is not the issue on the city's behalf, but on behalf of the city, it sounds like fraud by the Cuyahoga Board of Elections because this is misleading information all the way up to this point. How do we rely on the system to put prospective politicians into run our city?

This information is given off the Cuyahoga Board of Elections website. Even though Issue 109 we were short 19 votes, with the provisionals, there's still a chance, but if I'm not nuts, this sounds like the numbers are not adding up. If there was over 5,000 people that moved into the city in a month, that's a miracle. I understand everybody wants to vote, but this is an issue about dollars. Nine ninths, that's ninety cents on every dollar. Nothing against that campaign, but honestly we were misled in my eyes and the public's, so we're going to wait another week. I thought it was my duty to come up here and let the whole public know that there is still hope for the no votes. Again there is 1563 provisionals with 50 in

mail votes, that's 1613 votes that will be counted. So we'll know, but again I would just like.

The last issue is, I think we need to convert 20 polling locations to 8 locations. One in each ward. We need to look at the churches not being a spot and apartment complexes that are facilitated as senior facility. Thank you.

President Holzheimer Gail – I just would remind those listening that we don't have any way at the moment of verifying the numbers from the Board of Election. I don't know Mayor if you happen to know how many registered voters are in Euclid?

Mayor Cervenik – I'm still having trouble working on this but there's approximately 35,000 registered voters in the City of Euclid, not fifteen or eighty-four nine that was said. There's about 35,000 registered voters. That's probably a little high because the voter rolls are not purged the minute someone moves out of the city unless they provide the card. It is well north of 30,000.

Director Frey – We had in Presidential elections which of course this was one, we will have more than 25,000 votes cast in Euclid for the combined candidates. I can tell you that it is my understanding from the Board of Elections that they will look at both the polling locations and the numbers of precincts assigned to each ward. The rest of the County had a reduction in number of precincts. They skipped making that change in Euclid because of our resent voting, our change to the eight wards. They thought that was an adequate amount of confusion at any one time. I would anticipate that we will have a reduction in the number of precincts to get our precinct sizes consistent with the rest of the County. I'm pretty certain they are going to make some changes in polling locations. Obviously as the popularity of voting by mail increases, the need for numerous voting locations for in-person voting decreases. I'm certain they are looking at that. It is in our interest for them to make that reduction as well. While you want to make voting as convenient as possible, you also want to make it as economical as possible. Since we pay for the voting from our tax duplicate, it is in our interest to have that streamlined as well. We'll be happy to work with the Board on any of those changes. I believe they send that notice to the Council Clerk as well so that all of you are aware of any potential changes.

President Holzheimer Gail – Seeing no other public comments, we will move forward with Council Members' Comments.

#### COUNCIL MEMBERS' COMMENTS

Councilman O'Hare – First off, Happy Thanksgiving to everyone. It is a nice holiday in that the Wednesday before Thanksgiving you can say to everyone in the United States anyhow, the Canadians they shift theirs a little bit forward, but you can say to everyone and everyone understands it and everyone gets it. Increasingly that's not always easy to do and that's fine, but it truly is very much America.

A very quick story, we've had German exchange students back in the past, four different times. They could never understand Thanksgiving. They heard turkey and they heard football. That's what we hear this is all about. Well it turns out that's in some ways not that far from the truth. But, at dinner at one Thanksgiving, one of the exchange students turned to me, around the table there were about 16 that year, she leaned over and she says, I get it now, this is more than just a meal and yes it is. Again, Happy Thanksgiving to everyone.

I don't know that there will be everyone at the Irish American Club Eastside on Saturday the 24<sup>th</sup> at the Hooley. I do know how to pronounce it, I think I know how to spell it, but it begins at 7 PM. I'm sure it will make for a boisterous time. There might even be some people who will be playing bagpipes and I understand the band Mary's Cross who is quite loud but quite good also. With that I'll say goodnight to everyone and again Happy Thanksgiving.

Councilman Langman – I know myself and many of my colleagues and of course the Mayor was here for the Veteran Day observances back on the 11<sup>th</sup>. It is always very moving to see the ceremony. I know sometimes we only recognize Veterans and those that have given the ultimate sacrifice on Memorial Day and Veterans Day, but we really should be thanking Veterans everyday. If you know of one or see one, please thank them for their service to our country. With that, I look forward to seeing everyone on the 30<sup>th</sup> for the Holiday Lighting Ceremony. With that, I'll wish everyone a Happy Thanksgiving.

President Holzheimer Gail – Just a quick announcement. We have changed the Executive & Finance Meeting to go over the budget from next week until December 5<sup>th</sup> & December 10<sup>th</sup>, in order to give a little more time with the holiday and some staff being out and doing training, we weren't able to get complete and all the questions answered. We'll have much better information by waiting until the 5<sup>th</sup> & the 10<sup>th</sup>, so keep those dates marked.

I look forward to the Holiday Fest. It really was a wonderful event last year. Many of the council members were able to participate but it really is where the whole community comes together. There were wonderful activities from interfaith concert, activities for the kids, sleigh rides, holiday lighting and it was crowded and a great representation from the community. I would invite everyone to come out to that.

The Euclid Symphony Orchestra will have their Holiday Concert that same weekend, Sunday, December 2 at 3:00. That is always a treat as well.

I was able to start the holiday, the past Saturday I was the Judge for the Euclid Public Library Cookie Contest and was able to taste many different cookies of different varieties. It was a great start to thinking about the holidays and I appreciate the invitation and congratulations to the winners.

Thank you to the Euclid Youth Hockey Association for their event on Saturday. Very well attended and great to see all of the support from the community and parents. For not only that activity and event, but many others, we couldn't do it without them.

I will say Happy Thanksgiving.

Mayor Cervenik – Garbage collection because of the Thanksgiving Holiday, Thursday collection will be Friday. Friday will be Saturday. Same with recycling.

Councilwoman Caviness – I'd like to take this time to congratulate Heritage Park Homeowner's Association. They will be celebrating their 20<sup>th</sup> year as a neighborhood organization in Ward 1 on November 29<sup>th</sup> at 6:30 PM at the Police Mini-Station. Pearlitha Taylor is the President, Vince Riha Treasurer. The Indian Hills will be celebrating at Kristy's and further details will come about. That will be Saturday, December 15<sup>th</sup> from 6:30-10:00 PM. They will be celebrating 70 years and is the second oldest active homeowner's association in the city.

I'd also like to mention recently on the 11<sup>th</sup> of November Rev. Hilton Smith was elected as the President of the NAACP. This is the first time in 20 years of having a new president. For those who aren't familiar with the National Association for the Advancement of Colored People which is NAACP, it was founded on February 2, 1909 and it is our nation's oldest civil rights organization. It advocates for civil rights as well as equal opportunities. Rev. Smith is taking office January 1<sup>st</sup> and his main goal is to focus on employment, job training and economic development, as well as working with leaders in the Greater Cleveland area.

The Euclid Hillcrest Collaborative with the holidays coming about at the Euclid YMCA on Babbitt Road will be giving away toys, shoes and clothes for children for the holiday season. Anyone interested in donating for this give away can donate up until Monday, November 26<sup>th</sup> at noon and you can contact Alicia Smith at 216-731-7454 for further details.

With Thanksgiving upon us, Four Square Church at 18950 Euclid Ave., was assisted recently by some students from Euclid High School in preparing for their hot meal. That will be this Thanksgiving, Thursday, from 1:00-4:00. That's at the Four Square Church, 18950. Their phone number is 216-531-1084 and they're open to anyone who wants to come out for a hot meal.

To conclude, I would like to quote from William Ward for this Thanksgiving. He states that God gave you a gift of 86,400 seconds today. Have you used at least one of those seconds to say thank you. At that I will end, thank you.

Councilwoman Scarniench – Mayor, Pat Kirn and I had set up to have an Assets Meeting with the Golf Course for January 30<sup>th</sup>. Are we still going to be able to do that, do you have any idea? Are they still planning to come?

Mayor Cervenik – I can assure you Patrick will not be here. He'll be in Georgia.

Councilwoman Scarniench – I understand that, that's why I'm asking.

Mayor Cervenik – If that meeting is schedule, I will check with Nick Bednar and hopefully they'll have the general manager chosen for Briardale and it will be a good time for all of us to get to know him.

Councilwoman Scarniench – Director Bock, have you been able to hunt up the information about the museum yet? I understand if you haven't.

Director Bock – Honestly I have not. I will get working on that.

Councilwoman Scarniench – Another thing is, before I went into the hospital, there was a water leak on my street. It is still leaking. Do we have any idea when they're going to fix it? Before the snow flies and the ice comes, I think that's about number 40 for my street.

Director Bock – We'll get a hold of Cleveland Water first thing in the morning.

Councilwoman Scarniench – They've got the little stakes in the ground so somebody has been out there but it is still leaking.

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Director Bock – They were on 222 that blew up over the weekend and now they were on Gilmore this evening, that blew up and it has been a couple of weeks getting that worked on. We'll get them up to you.

Councilwoman Scarniench – The last thing is Happy Thanksgiving to everybody. I am really grateful because my daughter-in-law is cooking Thanksgiving dinner for me this week, first time in 43 years that I'm not making a turkey. I get to sit back and relax so thanks Gloria.

With that I want to thank everyone who has called me, sent me emails and cards because of my surgery. Your prayers and everything helped me get through a very difficult week and I appreciate all of them. I have to take it easy, I'm not going to be everywhere but I felt it was important to be here tonight. I thank Mr. Beck for being my chauffer. With that, goodnight.

Councilwoman Jones – Speaking of water leaks, the one in front of 26640 was finally fixed. Thank you for your persistence with Cleveland Water. We'll see how long it lasts this time because the last time they came out and fixed it, I think it was less than a week and it was leaking again.

I want to say thank you to Celebration United Methodist Church. I attended their one year anniversary about a week ago and it was very nice service. As part of that service, in the afternoon, they had a performance from the Richmond Hts. High School Choir which put on a fabulous performance. This is a choir that has gone around to various different states and has won various different awards. It was a great service. Congratulations to Celebration United Methodist Church for their one year anniversary at 777 E. 260 Street.

I also attended this past Sunday the Cathedral Worship Center had a special service in celebration of their phase one renovation project that they were putting on. For those of you who remember, this used to be a car dealership and now it is a church location, Cathedral Worship Center. If you haven't had the opportunity to go by and see and Pastor Moore is welcoming all the council members who weren't able to make it to the service on Sunday, please stop by. They have a little token of their appreciation for you. Mayor Cervenik was there and some of the other administration was there as well. Thank you for their work and dedication to the city.

Going along with the Thanksgiving theme, Imani Church on Thanksgiving Day will be serving a free Thanksgiving meal from 12:00-3:00 PM. If you have the excuse that you don't have a way to get there, they are willing to come and pick you up and take you to the church and drop you off. Please call the church if you need a ride and they'll make arrangements to pick you up and take you back after the service is over.

Speaking of picking up and taking home, relation to the holiday celebrations that will take place on November 30<sup>th</sup>, I had a conversation with Rev. Perryman of New Birth Church after the Planning & Zoning meeting last week. He has offered for those who may not have a ride to the Holiday celebration that he will provide busses available to take those to the celebration. I'm going to try to coordinate with Rev. Perryman to see if there's enough interest for this first of all. We're going to start off with two locations for pick up and drop off. It isn't going to be to come to everybody's house, so don't clap for that. It will be locations for pick up and drop off from two locations. One will be the parking lot in the Richmond Euclid Plaza and they'll pick you up and take you to Shore Cultural Centre and then take you back to the same location. This is not going to be a babysitting service. It is not that you can send all the kids to come and enjoy, they still need adult supervision as well. For anyone who is interested in that ride service, give me a call, 216-570-4738 and I will be posting flyers around different locations as well and sharing that with my colleagues as well who may need that information.

In going along with the theme of Thanksgiving, we all have something to be thankful for. In relationship to Thanksgiving, please take time and recognize those things that you are thankful for. Even though we are doing it on Thanksgiving, we should be thankful for things on an every day basis. Take the time out whether it is a minute or two or more and be thankful for the things you have in your life whether it is your family, a Thanksgiving meal or whatever. I hope everyone has a nice holiday and see you at the Holiday Celebration November 30<sup>th</sup>.

Councilman Lynch – The day before our Holiday Celebration on the 30<sup>th</sup>, we have another community event. Our Ward 4 Meeting, the World Café, we're going to be talking about what does it mean to be a good neighbor. It is primarily for the residents of Ward 4 but I'd certainly invite the council members and any other community leaders are welcome to attend. It is at Our Lady of the Lake Church at 7 PM on November 29<sup>th</sup> and we'll be happily ushering everybody to the Holiday program the day after.

I really like the Holiday of Thanksgiving. To me that sense of unity that Councilman O'Hare talked about is really poignant for me too. What is so important is that it gives us this unqualified sense of awe and appreciation for everything that we have. It is really a universal feeling of good will in a way that it applies to everything. When we think about all the blessings that we have, you can't put a name on it. You can't put a single face or a single day or a single time. That sense of reverence is unique of the Thanksgiving Holiday and so I'm looking forward to celebrating it with everyone in this city. I wish everyone a restful and blessed Thanksgiving Holiday.

Councilman McLaughlin – It is the first time I’ve ever been last, it is interesting. Director Bock are we set with Strand, are they beginning their assessment?

Director Bock – I have not completed the contract with them yet. As soon as that’s done, they’ll get started.

Councilman McLaughlin – First of the year?

Director Bock – Yes.

Councilman McLaughlin – Although she’s probably not listening, I would like to congratulate Congresswoman Fudge for becoming the leader of the Black Caucus, that’s a very big deal.

Lastly, I personally love my family. I love my family get-togethers. We have a great time together and absolutely no one makes a better turkey and stuffing than my mother and that’s for the record. Everybody have a nice Thanksgiving.

ADJOURNMENT

Councilman McLaughlin moved to adjourn. Councilman O’Hare seconded. Yeas: Unanimous.

Attest:

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Clerk of Council

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President of Council