



# CLEVELAND HEIGHTS

## MINUTES OF THE CITY COUNCIL MEETING OF MONDAY, OCTOBER 4, 2004

Council Committee of the Whole of the City of Cleveland Heights, Ohio, met on the above date at 6:20 p.m.

Edward Kelley, presiding

Council Members present: Caplan, Dietrich, Evans, Kelley, Montlack, Wilcox

Council Members absent: Hicks

Mayor Kelley excused the absence of Council Member Hicks.

Staff present: Carter, Czaga, Downey, Malone, Niermann O'Neil, Ruane,  
L. Wagner, R. Wagner, Wong

Topic of discussion included general information pertaining to the City Manager's weekly memo.

Council Member Wilcox moved to adjourn into Executive Session at 7:05 p.m. Second by Mayor Kelley.

Edward Kelley, presiding

Council Members present: Caplan, Dietrich, Evans, Kelley, Montlack, Wilcox

Council Members absent: Hicks

Mayor Kelley excused the absence of Council Member Hicks.

Staff present: Carter, Czaga, Downey, Malone, Niermann O'Neil, Ruane,  
L. Wagner, R. Wagner, Wong

Topic of discussion litigation. Council Member Hicks arrived at 7:20 p.m.

Executive Session concluded at 7:22 p.m.

The Council of the City of Cleveland Heights, Ohio, met on the above date at 7:31 p.m.

Edward Kelley, presiding

Council Members present: Caplan, Dietrich, Evans, Hicks, Kelley, Montlack, Wilcox

Council Members absent: None

Staff present: Carter, Czaga, Downey, Malone, Niermann O'Neil, Ruane, Wagner, Wong

The minutes of the Regular Council Meeting held Monday, September 20, 2004 were signed by Mayor Kelley along with the ordinance and resolutions passed at that meeting.

Charles Luck, 3978 Orchard Road, asked, "Is it true that the fire department has reduced daily minimum staffing from nineteen to eighteen per shift basis?"

Mayor Kelley replied, "As of October 1<sup>st</sup>, that is true."

Mr. Luck continued, "Do we have a projected annual savings for that move?"

Mayor Kelley responded, "Mr. Downey, do you want to answer that question, please?"

Mr. Downey replied, "Certainly, your Honor. The savings that will be derived from this will primarily, well, will be entirely in overtime. It is estimated that the city could save between 280 and 300,000 dollars a year in overtime."

Mr. Luck asked, "Is that the only way to reduce costs? Was that the only option?"

Council Member Evans asked, "For that particular department?"

Mr. Luck replied, "Right."

Mr. Downey continued, "Your Honor, I'm not quite sure where the questioning is going, but the City Council has undertaken cost-cutting for nearly four years now, to attempt to deal with the budget tightening going on all over America - going on in both the private sector and the public sector. Every department in the City of Cleveland Heights has undergone budget tightening. It takes all different shapes and types, whether it be people, whether it be materials, tools, supplies. It is an enormous undertaking that the Council has been through and still is going through every day four years later."

Mr. Luck asked, "Does the City intend to further reduce staffing to less than eighteen at any time in the near future, for that matter?"

Mr. Downey continued, "I'll answer that. The City reviewed a number of options with the Fire Department on how best to curb their overtime. A number of options. In the end, this proved to be the option that would make the most significant change. There has been no talk of reducing from eighteen."

Mr. Luck continued, "Then, another question. When we send our city ambulances and fire trucks to other cities, are we compensated for that or is that just one hand washes the other one when it comes to surrounding communities?"

Mr. Downey answered, "We have, Mr. Luck, what is known as both automatic aid and mutual aid with our neighboring cities. Through our joint dispatch system that has been in place for over 22 years, we jointly dispatch from one operation (formerly two cities - now three cities). We know exactly how many runs we make into Shaker Heights and into University Heights and they know exactly how many times they come into Cleveland Heights. There is no money that exchanges hands for this automatic aid."

Mr. Luck continued, "Now to get off that subject, the current school bus two-mile rule that was legislated to save a lot of money, I guess. Now with winter fast approaching, I have a minor child that lives 1.9 miles and there is room on that bus that they use to take."

Council Member Caplan interjected, "Wrong board, that's not us."

Mr. Luck asked, "Who would I talk to, to get this finalized and get some - -"

Mayor Kelley replied, "You would start by calling the superintendent's office at area code 216-371-7330. I'm sure she would route you in the right direction."

Mr. Luck asked, "And the name would be?"

Mayor Kelley answered, "Miss Delisle."

Mr. Luck answered, "Thank you very much."

Marianna Stein, 2727 Lancashire, stated, "We have at least 240 units, probably about 300 people in our building plus the rest of the precinct and I was able to make a couple of runs to the Board of Elections. This morning I picked up some supplies. Kerry was there standing, and Stephanie Tubbs Jones and Lou Stokes and several other people and the media, of course, was there. I was just there to pick up some things and later I was able to go back with some already prepared cards that were already filled out. This was given to me by the office and I have also done quite a bit of registering - registration cards is what I was trying to get out. I'm sorry. Our building is very sensitive to voting and they come down and they are enthusiastic and it's a great thing to them. I'm going to sit down because I've been running all day."

Mayor Kelley asked, "Did you see Councilman Wilcox? He was also at the Board today when you were there."

Ms. Stein replied, "Yes, I did, I'm sorry."

Mayor Kelley said, "We don't want you not to mention him."

Ms. Stein continued, "Well, you know, after you run around and see 1,000 to 1,400 people a week with free bread and thirteen to nineteen churches, it's a good thing I recognize me in the mirror."

## **REPORT OF THE CITY MANAGER**

Mr. Downey stated, "Thank you very much, your Honor. We have several items this evening, the first of which would be to request authority to advertise for bids for the purchase of strash bags and Kraft paper bags."

Mayor Kelley made them a matter of record and referred them to the Municipal Services Committee of Council.

Council Member Hicks moved that the City Manager be given authority as requested.

Second by Council Member Dietrich.

Roll Call: Ayes: Caplan, Dietrich, Evans, Hicks, Kelley, Montlack, Wilcox

Nays: None

**Motion passed**

Mr. Downey continued, "Thank you very much, your Honor. We would also request authority to advertise for bids for the installation of an above-ground fuel storage tank for Fire Station No. 1."

Mayor Kelley made them a matter of record and referred them to the Municipal Services Committee of Council.

Council Member Evans moved that the City Manager be given authority as requested.

Second by Council Member Caplan.

Roll Call: Ayes: Dietrich, Evans, Hicks, Kelley, Montlack, Wilcox, Caplan

Nays: None

**Motion passed**

### **REPORT OF THE DIRECTOR OF FINANCE/CLERK OF COUNCIL**

Mr. Malone stated, "Thank you, your Honor. I need to notify Council that two (2) notices have been received from the Ohio Department of Liquor Control advising that applications have been made by the following: Mayfield Coventry Pizza Co. Ltd., dba Pizzazios, transfer D5 and D6 permits from Coventry Pizza Co., dba Decent Pizza, premises 2768 Mayfield Road, 44106, and Fairmount Martini & Wine Bar Ltd., dba Varietals, transfer D1, D2 and D3 permits from Reichway Productions East Inc., dba Varietals, premises 2448-50 Fairmount Boulevard, 1<sup>st</sup> Floor Unit 2, 44106. I request that these be made a matter of record."

Mayor Kelley made them a matter of record and referred them to the Public Safety and Health Committee of Council, the City Manager, and the Director of Law.

Mr. Malone continued, "I also need to notify Council that a letter dated October 4, 2004 has been received from the Assessment Equalization Board stating that the meeting of the Board was held Tuesday, September 21, 2004 to consider objections to proposed assessments for a portion of the expense of street lighting and to consider objections to proposed assessments for a portion of the expense of planting, maintaining and removing shade trees within the City. Your Honor, I also need to make this a matter of record."

Mayor Kelley made it a matter of record.

### **REPORT OF THE ADMINISTRATIVE SERVICES COMMITTEE**

Council Member Dietrich stated, "I have no legislation, but I do want to mention a couple of things. First of all, I would like to thank everybody that was involved in last week's forum on school funding, called "School Funding in Ohio, It's Broken! Can We Fix It?" I guess, which is an understatement. The City co-sponsored the forum with Reaching Heights, The First Suburbs Consortium and EcoCity Cleveland and I just wanted to mention our Community Relations Director, Susanna Niermann O'Neil and Mayor Kelley and Reaching Heights Director, Susie Kaeser, who really did most of the work for organizing it. I want to thank past School Board President, Steve Bullock, for doing a very effective job as moderator. I don't know anybody who can fit more information into a more concise speech than

Jan Resseger, who is a Cleveland Heights resident and probably the leading expert in Ohio on school funding. If you missed the forum, it will be shown on cable channels throughout the county. For us, that's Channel 23, but other communities will be able to see it on their cable channels. If you weren't able to attend it and you're interested in the mess that is Ohio school funding, you can watch it on cable.

I did also want to say one thing that is related to voting on November 2<sup>nd</sup>. Now that everybody who will vote is registered, because today is the last day to register to vote, it's time to start thinking about absentee ballots; to think about your family, your friends, your neighbors, and if anybody may be in the hospital or confined to a nursing home, somebody away at college, somebody just happening to be away on business that day even, somebody on a vacation - all those people could use an absentee ballot. The reason I'm reminding you of this now, four weeks ahead, is that some people don't realize it's a three-step process. You don't just call your board of elections and ask for an absentee ballot and receive the ballot. What you first receive is an application for an absentee ballot. You have to fill that out - mail that back to the Board of Election, they will then mail you your absentee ballot which you would then fill out (vote) and send back to them and it has to be back to the Board of Elections by the end of the day on the day before the election unless you are in a hospital, in which case you have until the very day of election. It's quite a bit more of a process than you might think. So, it really is time to start now if you or anybody you know needs to vote by absentee ballot, but you have time for these three mailings to take place. You can get an absentee ballot application by phoning the Board of Election Absentee Ballot number which is 216-443-3221. You can also go to their website which is [www.cuyahogacounty.us/boe](http://www.cuyahogacounty.us/boe) or else probably the easiest way to get an absentee ballot application is just to come down to city hall. I do hear that the phone lines at the Board of Elections are a little hard to get through on. So, your best bet might be to come to city hall and get that, but please be thinking and don't let anyone neglect to vote because they are not there on that day. Thank you."

#### **REPORT OF THE COMMUNITY RELATIONS AND RECREATION COMMITTEE**

Council Member Caplan stated, "Thank you. I also have no legislation and carrying along the theme of voting. First of all, I have seen what is on our ballot and it is very long and actually we all need to begin to look at all the people that we vote for. Obviously, we're focusing on the presidential and the senatorial races but there are lots and lots of people who are running. No local people for local offices but there are a lot of judges, a lot of county offices are on the ballot. There are also several issues and one is for the metro parks. There is a state issue that is essentially depriving homosexuals of basic rights in this state and that is Issue 1 and we have two issues on the ballot for Cleveland Heights. I will talk about one and I am sure that Councilman Wilcox will talk about the other and actually I don't know if mine is 27 or 28."

Mayor Kelley added, "Yours is 27, Dennis' is 28."

Council Member Caplan continued, "Twenty-seven is the maintenance for our parks and recreation and cultural facilities. We are retiring a bond issue that had been voted on by the residents in 1987 and at the time it was for 1.35 mills and that means that everyone who has a \$100,000 home pays approximately \$43.00. We're putting an issue on the ballot that is .7 which means that it will cost somebody with a \$100,000 home about \$21.00. So it's half of what you would be paying. The other one you will stop paying on and this is to take care of all the maintenance on Cain Park, on other ball fields, on the tot lots, on the kiddie swimming pool, on all the things that we take for granted. When we see them, just like in our house, we have to keep maintaining all of the things that we own. So, all of City Council is unanimous in supporting this. All of the past mayors who are around are supporting this issue, so we encourage you to please vote yes to tax yourself - and half of what you're paying now - and it is not an onerous tax, but so that we can keep our facilities in good order. That's all I have now. Thank you."

Mayor Kelley added, "Issue 27 will also continue our beautification efforts throughout the city, the beautiful flowers in the islands, some of the beautiful things we've done - some of the hanging baskets in our parks. So those of you who have commented favorably (which is almost everybody that talks to us about this issue) it will continue to allow us to do even more beautification than has been done in the past. So, don't forget to vote for Issue 27 on that issue also."

### **REPORT OF THE FINANCE COMMITTEE**

Council Member Wilcox stated, "Thank you, your Honor. There are four pieces of legislation from the Finance Committee tonight and they all regard our assessments for street lighting and maintaining shade trees throughout the city. The first one is Resolution No. 144-2004(F), approving the report of the Assessment Equalization Board appointed to hear objections to the estimated assessments for a portion of the expense of street lighting within the City of Cleveland Heights; and declaring an emergency. Council previously appointed an Assessment Equalization Board to hear objections to the estimated assessments for a portion of the expense of street lighting within the City. The Assessment Equalization Board did meet on September 21, 2004 and did hear and determine all objections before it and the Board has submitted its report and recommendations to this Council.

That report which is dated today was received and indicated that the Assessment Equalization Board heard twenty-three objections and I believe approximately fifteen people actually showed up at the hearing and they overruled all the objections and any equalization requested by the objections.

Section 1 of this Resolution simply states that the report of the Assessment Equalization Board appointed by Resolution No. 130-2004 is hereby accepted and approved. Section 2 then provides that the estimated assessments, as equalized by said Board, and the recommendations to this Council with respect thereto, are hereby directed to be placed on file with the Director of Finance/Clerk of Council. I offer Resolution No. 144-2004(F) for passage tonight."

Council Member Hicks stated, "It was something interesting for me to learn about this particular Board for residents that did complain. This Board really didn't have any power to mitigate any of your costs, but they were to do what they were supposed to do and listen and then report back to Council. Again, this Board did not have the authority to reduce costs or take costs away from anyone."

Council Member Wilcox added, "I just want to point out that is correct. The primary purpose of the Equalization Board is to determine that the city has made the correct calculation of the assessment based on the front footage of the person's land. That is their primary purpose and the city has made all those calculations correctly."

Mayor Kelley accepted Resolution No. 144-2004(F).

Roll Call: Ayes: Evans, Hicks, Kelley, Montlack, Wilcox, Caplan, Dietrich

Nays: None

**Resolution passed**

Council Member Wilcox continued, "Thank you. Next, I have Resolution No. 145-2004(F), approving the report of the Assessment Equalization Board appointed to hear objections to the estimated assessments for a portion of the expense of planting, maintaining and removing shade trees within the City of Cleveland Heights; and declaring an emergency. Again, Council appointed an Assessment Equalization Board to hear objections to the estimated assessments for a portion of the expense of planting, maintaining and removing shade trees. As I mentioned that Board met on September 21, 2004 and submitted its report. Section 1 of this Resolution, provides that the report of the Assessment Equaliza-

tion Board appointed by Resolution No. 131-2004 is hereby accepted and approved. In Section 2, the estimated assessments, as equalized by the Board, and the recommendations to this Council are hereby directed to be placed on file with the Director of Finance/Clerk of Council. I offer Resolution No. 145-2004(F) for passage tonight.”

Mayor Kelley accepted Resolution No. 145-2004(F).

Roll Call: Ayes: Hicks, Kelley, Montlack, Wilcox, Caplan, Dietrich, Evans

Nays: None

**Resolution passed**

Council Member Wilcox continued, “Thank you. Next, I have Ordinance No. 146-2004(F), determining to proceed with the assessment of a portion of the expense of street lighting within the City of Cleveland Heights; levying assessments for said purpose; and declaring an emergency. Council has previously declared the necessity of assessing a portion of the expense of street lighting within the City. Those estimated assessments were prepared and filed with the Clerk of Council as we previously discussed, the objections were filed to the assessments and the Assessment Equalization Board has heard the objections and filed this report with Council. The Council has approved and accepted that report and so those estimated assessments as equalized are on file with the Clerk of Council. Council has now determined to proceed with levying of the equalized assessments in accordance with the street lighting list now on file with the Director of Finance/Clerk of Council. Section 1 of this Ordinance, provides that it is the determination of this council, in the furtherance of the public health, convenience and general welfare, to proceed with assessing of a portion of the cost and expense of street lighting within the City, upon the lands described in this Ordinance, for a period of three (3) consecutive years beginning with the 2004 tax duplicate for collection in the years 2005 through 2007, inclusive, at the annual rate of Sixty-eight Cents (\$.68) per front foot, on the following properties:

I should point out that the previous assessment which was in place prior was sixty-six cents (\$.66) per front foot.

The properties listed, essentially are every dedicated street within Cleveland Heights, so I am not going to read them all. If you live on a dedicated street in Cleveland Heights you would be covered by this.

Section 2 of this Ordinance, then provides that it is the determination of this Council that no claim for damages was filed with the Director of Finance/Clerk of Council. Section 3 provides that the cost and expense of the aforesated improvements, up to an amount equal to Sixty-eight Cents (\$.68) a front foot, per year, on the above-described lots and lands, shall be assessed in proportion to the special benefits which will result from the street lighting upon those lots and lands. The remainder of the cost and expense of the improvement which exceeds the cost and expense of improving street intersections, and two percent (2%) of the entire cost, shall be paid by the City. Any cost of said improvement not specifically assessed shall be paid by the City. The total assessment provided for in this Ordinance is Two Million One Hundred Twenty-two Thousand Nine Hundred Ninety-nine and 41/100 Dollars (\$2,122,999.41). Section 5 of this Ordinance, provides that the assessment against each lot and parcel of land shall be levied in three (3) equal installments, shall be certified to the County Auditor and placed upon the tax duplicate according to law, and shall be collected as other taxes; provided, however, that a property owner shall have the option of paying the assessment in cash within thirty (30) days from the adoption of this Ordinance, or in three (3) annual equal installments. I offer Ordinance No. 146-2004(F) for passage tonight.”

Mayor Kelley accepted Ordinance No. 146-2004(F) for passage tonight.

Council Member Dietrich commented, "Just really briefly, lest anybody be confused, Councilman Wilcox sort of said it, but I think we need to emphasize that these are not new - that we've been assessing the shade trees and the street lights for years and years and that this is not something new."

Mayor Kelley reiterated, "This is not a new tax. An adjustment of an old tax."

Roll Call: Ayes: Kelley, Montlack, Wilcox, Caplan, Dietrich, Evans, Hicks

Nays: None

**Ordinance passed**

Council Member Wilcox continued, "Then I have Ordinance No. 147-2004(F), determining to proceed with the assessment of a portion of the expense of planting, maintaining and removing shade trees within the City of Cleveland Heights; levying assessments for said purpose; and declaring an emergency. Similar to the lighting assessment, Council has previously passed a resolution of necessity for these assessments and filed estimated assessments with the Clerk of Council. We received some objections and the Assessment Equalization Board has heard those objections and has filed their report, which we have now accepted, and we are now determining to proceed with the actual assessment. Section 1 of this Ordinance, provides that it is the determination of this Council to assess a portion of the cost and expense of planting, maintaining and removing of shade trees within the City, upon the lands described for a period of three (3) consecutive years beginning with the 2004 tax duplicate for collection in the years 2005 through 2007, inclusive, at the annual rate of Fifty-nine Cents (\$.59) per front foot.

Again, this tax has been on the books for some time as well - this assessment rather. The previous amount of that assessment was Fifty Cents (\$.50) per front foot and now it is Fifty-nine Cents (\$.59). Again, if you live on a dedicated street in Cleveland Heights you would be covered by this Ordinance. I won't read the same provisions of this Ordinance, again, because it is identical to the street lighting assessment other than to say that the total assessed cost is One Million Eight Hundred Eight Thousand Four Hundred Eighty and 97/100 Dollars (\$1,808,480.97) and again, the assessment will be certified to the County Auditor, to be placed upon the tax duplicate and collected as other taxes; provided, the property owner does have the option of paying the assessment in cash within thirty (30) days from the adoption of this Ordinance, or in three (3) annual equal installments. I offer Ordinance No. 147-2004(F) for passage tonight."

Mayor Kelley accepted Ordinance No. 147-2004(F).

Roll Call: Ayes: Montlack, Wilcox, Caplan, Dietrich, Evans, Hicks, Kelley

Nays: None

**Ordinance passed**

Council Member Wilcox added, "I wanted to thank our Assessment Equalization Board for their work for the city: Janet Bihary, Mark Cegelka and Anthony Ianiro.

Next, I wanted just to discuss Issue 28 and again, would urge voters to support Issue 28 which will be on the ballot. It's a city issue and this is somewhat difficult to explain, but I'm going to try to do it as simply as I can. The city has in its Income Tax ordinance - permits the taxing of S Corporations - that is the distributive share profits of S Corporations, I should say. The state legislature has required, if we continue to do this, we need to get a vote of the residents of Cleveland Heights. Issue 28, simply allows the city to continue to collect the tax, which it has had on the books for many, many years. This

is not a new tax and it will cost the city much needed revenues if it is repealed, as a no vote would do. This issue, in my mind, is just a matter of fairness and everyone paying their fair-share of taxes. Just to give you an indication that's what it is, there will be eighteen other cities in Cuyahoga County with this very same request for permission to tax S Corporations placed on the ballot this fall on November 2<sup>nd</sup>. So, again, I would urge you to vote 'yes' on Issue 28 on November 2<sup>nd</sup>. That concludes the report of the Finance Committee."

### REPORT OF THE MUNICIPAL SERVICES COMMITTEE

Council Member Hicks stated, "Thank you, your Honor. I have one piece of legislation this evening. I have Resolution No. 148-2004(MS), recognizing October, 2004 as Recycle Ohio! Month; and declaring an emergency. It reads as follows: Whereas, Ohio residents have joined Cleveland Heights residents in recognizing the importance of reducing the volume of solid waste by reusing products and materials before final disposal and recycling as many materials as possible; and whereas, environmental and natural resource concerns are a high priority for the citizens of the State of Ohio; and whereas, children continue to learn about recycling through public education and school programs throughout the state; and whereas, Ohio businesses, industries, government agencies and schools, as well as civic and environmental organizations are including recycling as a viable solid waste management option; and whereas, Ohioans are encouraged to "close the recycling loop" by purchasing products made from or packaged in recycled materials, as buying recycled products helps maintain market demand for locally-collected recyclables and ensures the continuation and expansion of the state's recycling collection programs. Now, therefore, be it resolved by the Council of the City of Cleveland Heights, Ohio, that: This Council hereby joins with other communities throughout the State of Ohio in recognizing October, 2004 as Recycle Ohio! Month and acknowledges and commends the active involvement of those Ohioans who begin or increase their recycling efforts, and encourages and challenges others to adopt waste reduction efforts for the preservation and conservation of Ohio's natural resources. Section 2 is the notice of passage of this Resolution. Section 3 deals with the emergency measure. Your Honor, I offer Resolution No. 148-2004(MS) for passage this evening."

Mayor Kelley accepted Resolution No. 148-2004(MS).

Vice Mayor Montlack commented, "I know we've talked about recycling before. I'm not going to go through a long speech why it's important, but one of the things I would hope everyone would consider is that especially with our budget under such great stress that the simple act of (and I do mean simple act) doing the recycling according to the Cleveland Heights' guidelines will save a lot of money for the city. Sometimes, a few pennies get paid for the recyclables. Sometimes, the city actually pays, but in any event if there is a net savings over the cost per ton of taking trash to the landfill, this is very important and it's something, as I said, easy to do. If you've never done it, maybe you feel a little intimidated, it's so easy with the Cleveland Heights mailers and time-to-time tips that go out on how to recycle. It's easy to do. When you do it at home it provides definite quality family time together, recycling. All kidding aside, it's something I hope you'll consider. Thank you."

Roll Call: Ayes: Wilcox, Caplan, Dietrich, Evans, Hicks, Kelley, Montlack

Nays: None

**Resolution passed**

Council Member Hicks continued, "Thank you, your Honor. Also, our city is also recycling empty printer, fax and copy cartridges. All cartridges are accepted; laser and ink jets, so if you don't have a way of recycling those, you can also bring those to the city and we can help you in recycling those items also.

I also want to point out for Issue 27, some opponents may try to make people believe that we're trying to raise money to pay for the community center expenses and that is not true. This is going to be paying for exactly what Council Member Caplan talked about. So, don't let anyone make you believe that we're trying to get operating expenses for the community center, because that is not true.

I ask everyone to please continue to watch the presidential debates. They have been interesting thus far and I am in anticipation of the one tomorrow with the vice president's [debate] and the remaining two. I believe that the one last week was one of the highest viewerships of any presidential debate in the past. So, continue to watch and continue to be informed. Thank you, your Honor."

### **REPORT OF THE PLANNING AND DEVELOPMENT COMMITTEE**

Vice Mayor Montlack stated, "Thank you, your Honor. There is no legislation from this committee, just a few brief comments. First, I simply want to add my voice to strongly asking, endorsing and asking the voters to vote for Issues 27 and 28. They are very important. You may have heard at the beginning of this meeting some questions that went from a resident to the City Manager in which the City Manager had an opportunity to talk just a little bit about all of the sacrifices and cuts that have gone on in this city because of our budget problems. Problems, not at all of our own making, but resulting from, in effect, perhaps two factors more than any other, the General Assembly balancing the budget on the backs of cities through the estate tax and local government fund maneuvers and the continuing increases - dramatic increases in hospitalization when we're doing the very best we can. Each of these two issues will help in critical ways. They've already been well-explained and I don't need to go through them one more time.

I would ask you to consider something in the election that perhaps doesn't get talked about enough as Council Member Caplan said, you're going to have a long ballot. Many judicial names, many judicial races - I think among the most important of our contests are for the Ohio Supreme Court. Now, we need only remember what happened with the school funding issue and in this case one of the candidates for that office, Judge William O'Neill, in effect made history, by taking to the courts his claim, upheld by the courts that the judicial candidates ought to be given greater leeway to discuss the issues and the issues that even those that would come before his or her court were he to be successful. With that, that particular candidate has said something that frankly I've thought for quite a long time - why is it that so many times the school funding issue came back to the Ohio Supreme Court? Each time the court found that the funding scheme was unconstitutional, that the onus should be on the General Assembly to do something about it, to fix it with some general guidelines that were provided by the court and each time that didn't happen and yet there was no action taken. Of course, we all know that in a situation like that a potential remedy is contempt of court and frankly we are still stuck with that issue. I think that in other ways we have to recognize that despite what we may have learned in civics class, this highest court, especially, is a political court. That doesn't always mean that the vote is by party line but it certainly is one in which political issues and political philosophies very much come into play. In my opinion, we live in a state [where] we are subject to some court decisions that portray a definite anti-urban bias. This provides quite a burden for us. I know that there are two candidates; Judge Connally and Judge O'Neill in the Supreme Court race who have indicated by their records their values in this regard. It is not for me to tell anyone how to vote, but I hope that the voters will be educated, will educate themselves on the vote for those races, because in so many ways our lives will be affected by the choices that we make.

Finally, it would be nice to be very optimistic on how election day will actually proceed and whether our county board of elections will have all the notices out and in place, but I think we have to be at least mentally prepared, especially if you are newly registered, prepared in the sense that if you

have not received good information election day - for starters; if you are registered check with you neighbors on either side - because as has been pointed out, sometimes a part of one street votes at one [polling] place and the other part votes at another polling place. Find out where your neighbors are voting and if you haven't voted absentee go and cast that vote. As I said, that's not very happy news or a happy guess as to what might happen, but we have to be prepared. Those of us who've been around a few elections we're used to hearing in every election that this is the most important election of our lifetime and you get to hear that so often you kind of dismiss it. I think a good case could be made, though, that this is the most important election of our lifetime. Thank you."

## **REPORT OF THE PUBLIC SAFETY AND HEALTH COMMITTEE**

Council Member Evans stated, "Thank you, your Honor. I'd like to present Resolution No. 149-2004(PSH), joining with the National Conference of Mayors and communities throughout the nation in proclaiming October, 2004 as National Breast Cancer Awareness Month and October 15, 2004 as National Mammography Day; and declaring an emergency. Whereas, an estimated 216,000 new cases of breast cancer will be diagnosed in 2004 and approximately 40,000 will die from the disease. Early detection and prompt treatment can significantly reduce suffering and deaths caused by this disease. Mammography, an "x-ray" of the breast, is recognized as the single most effective method of detecting breast changes that may be cancer long before physical symptoms can be seen or felt. In 1997 the National Conference of Mayors launched a Mayors' Campaign Against Breast Cancer, joining in the promotion of Breast Cancer Awareness Month and National Mammography Day. Therefore, be it resolved by this Council that we proclaim October, 2004 as National Breast Cancer Awareness Month and October 15, 2004 as National Mammography Day, and urges women in the community of all ages to obtain and utilize information about screening and mammography and to seek appropriate services. I'd like to present Resolution No. 149-2004(PSH) for passage this evening."

Mayor Kelley accepted Resolution No. 149-2004(PSH).

Roll Call: Ayes: Caplan, Dietrich, Evans, Hicks, Kelley, Montlack, Wilcox

Nays: None

**Resolution passed**

Council Member Evans continued, "Ordinance No. 150-2004(PSH), amending subsection (c)(2) of Section 505.091, "Vicious Dogs," of Chapter 505, "Animals and Fowl," and adopting and enacting a new subsection 505.19, "Designation of Dog as Vicious; Appeal," to clarify procedures for the designation of non-pit bull types of dogs as vicious and to specify appeal rights with regard to such designation; and declaring an emergency. Whereas, the Ohio Supreme Court recently ruled invalid a provision of the state law regarding vicious/dangerous dogs. The Supreme Court's ruling applied to dogs designated as vicious because of their propensity to attack or history of attack, not to pit bulls. It is desirable to amend the City's ordinance to clarify the procedure for designation of such non-pit bull types of dogs as vicious and the owners' right to appeal. Therefore, be it ordained by this Council that Section 1, Subsection (c)(2) of Section 505.901, "Vicious Dogs," of Chapter 505, "Animals and Fowl," of the Codified Ordinances of the City of Cleveland Heights, shall be and hereby is amended so that henceforth said subsection shall read as follows:

I. A "Vicious" dog as the term is used in this section means:

A. Any dog which has been judicially or administratively determined, pursuant to Section 505.19 of this Chapter, to have a propensity, tendency or disposition to attack, to cause injury or to otherwise endanger the safety of human beings or

other domestic animals; or

- A. Any dog which has been judicially or administratively determined, pursuant to Section 505.19 of this Chapter, to have attacked a human being or other domestic animal; or
- B. Any pit bull terrier, which shall be herein defined as any Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog or any mixed breed of dog which contains as an element of its breeding the breed of Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of Staffordshire Bull Terrier or American Staffordshire Terrier.

Section 2 is Chapter 505, entitled "Animals and Fowl," of Part Five, "General Offenses Code," of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to adopt and enact a new Section 505.19, with said Section to read as follows:

#### **505.19 DESIGNATION OF DOG AS "VICIOUS"; APPEAL**

- I. A dog may be determined to be "vicious," as defined in subsections (A) and (B) of subsection 505.091(c)(2), and thus subject to the requirements of section 505.091, in one of the two following ways:

(1) A court of competent jurisdiction may declare the dog to be vicious in an independent or related civil or criminal proceeding; or

(2) The Animal Warden may provide written notice to the owner or other person harboring or having care or control of the dog that the Animal Warden has determined the dog to be vicious. Such notice shall be given by personal service, ordinary mail, or by posting on the property at which the person resides. Any person aggrieved by the order of the Animal Warden hereunder may appeal such order in writing to the Health Code Board of Appeals pursuant to sections 1701.07 and 1780.08 of Part Seventeen of these Codified Ordinances. Such appeal shall be filed within five (5) working days of the date of notice, and heard within ten (10) working days of the date the appeal is filed. The filing of a notice of appeal hereunder shall stay the requirements of section 505.091 of this chapter, but shall not preclude the Animal Warden or Cuyahoga County Board of Health from impounding the dog if otherwise permitted by this chapter or other provisions of law and shall not in any way relieve the owner or other person harboring or having care or control of the dog from civil or criminal liability for injury or damage caused by the dog or for violations of provisions of this chapter other than section 505.091.

- I. The provisions of this section 505.19 are not applicable to dogs classified as vicious pursuant to the provisions of subsection (c)(2)(C) of Section 505.091.

Section 3 is notice of passage and Section 4 declares this to be passed as an emergency measure. I'd like to submit Ordinance No. 150-2004(PSH) for passage this evening."

Mayor Kelley accepted Ordinance No. 150-2004(PSH).

Roll Call: Ayes: Dietrich, Evans, Hicks, Kelley, Montlack, Wilcox, Caplan

Nays: None

**Ordinance passed**

Council Member Evans concluded, "That concludes the report, but I would like to continue with the point Vice Mayor Montlack began this evening and that is on election day. If you should go to the polls and they tell you that you cannot vote there, keep in mind that you can request a provisional ballot and you will be able to vote. They cannot deny you this provisional ballot and that will then be delivered to the Board of Elections and it will be determined later whether or not that ballot will count, but hopefully your registration will be found and it would count. So remember to request a provisional ballot. Do not get discouraged and leave the poles without casting your vote. That concludes my report. Thank you."

## **REPORT OF THE MAYOR**

Mayor Kelley stated, "To give you a little heads up, we've talked a lot about election day but for those of you who are going to vote on election day, you may want to schedule a time when you go to vote. This will be a traditional presidential election where we have 22 to 26,000 of our residents heartily going out to vote and that will mean a crowded day at the polls. So the usual off-peak hours at the polls will be from 9 to 11:30 and 1:30 to 4:00. So if you are in a hurry or do not want to stand in line or be backed up or you have chores to do or you have children to pick up or if you are bringing a friend to vote who may be elderly or frail, again, the best time to go to your polling place would be from nine in the morning to 11:30 or 1:30 to four in the afternoon to avoid rushes. If you are over 62 or you'll be out of the county or you have a variety of things going on that day, you are eligible for an absentee ballot and already somewhere in the neighborhood of 1,500 to 2,500 have already taken advantage of this depending on the Board of Elections real count. So we do encourage you to vote. I will put in a plug for you - for those of you - when you're voting for a judicial candidate - to do some homework before you vote. The League of Women Voters puts out an excellent guide to it. Many of the judicial candidates have websites nowadays. Realize whom you're voting for and don't just vote to vote. Do a little bit of homework. There are some very excellent judges. There are some very excellent candidates and believe it or not there are some people that are not fit to be a judge in any county or any city or any municipality, let alone a bigger arena than that. So, do a little homework before you vote. There are some good candidates and some very good judges and then there are some other people I don't think you'd have draw up a will for you, but that's just my personal opinion. I see Ed (Wittenberg - Sun Press reporter) writing heartily on that one.

It is now 8:26 p.m. This meeting is adjourned. Our next meeting will be Monday, October 18, 2004. Thank you for coming tonight."

Respectfully submitted,

Edward J. Kelley, Mayor  
President of Council

Thomas K. Malone  
Clerk of Council

/mwc