



CLEVELAND HEIGHTS

MINUTES OF THE CITY COUNCIL MEETING OF MONDAY, NOVEMBER 15, 2004

Council Committee of the Whole of the City of Cleveland Heights, Ohio, met on the above date at 6:10 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, Gibbon, Malone, Niermann O'Neil, Ruane, 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 6:13 p.m. Second by Council Member Evans.

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, Gibbon, Malone, Niermann O'Neil, Ruane, Wagner, Wong

Topic of discussion included litigation.

Executive Session concluded at 6:53 p.m. and reconvened to Committee of the Whole, adjourning at 7:33 p.m.

The Council of the City of Cleveland Heights, Ohio, met on the above date at 7:46 p.m.

Edward Kelley, presiding

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

Council Member absent: Hicks

Mayor Kelley excused the absence of Council Member Hicks.

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

The minutes of the Regular Council Meeting held Monday, November 1, 2004 were signed by Mayor Kelley along with the ordinances and resolutions passed at that meeting.

"Good evening, Mayor Kelley and Members of Council. I appreciate the time to come in and speak with you again. On behalf of myself, Dorian Waller from Adelphia Communications, the address is 3400 Lakeside Avenue and Lee C. Shapiro, who is the Director of Government & Public Affairs and she is in attendance this evening with me. I would like to read into the record, Adelphia's response in regard to Ordinance No. 173-2004(F), specifically to the disapproving of Adelphia's proposed monthly network upgrade surcharge. I do have copies of the letter for Council to have as I read. [The copies were passed to each council member.] I will be providing Mayor Kelley with the original copy of the letter. Adelphia's response is dated November 15, 2004. Addressed to honorable Ed Kelley who is the Mayor of the City of Cleveland Heights at 40 Severance Circle, Cleveland Heights, Ohio 44118. And as I stated before it's in regard to the Ordinance that I stated prior to reading and FCC Form 1235. Dear Mayor Kelley: Friday evening, November 12, 2004, Walter & Haverfield faxed information to my office indicating they were recommending that the City deny the FCC Form 1235. However, we believe that the City should accept Adelphia's FCC Form 1235 for the following reasons:

1. Denying the FCC Form 1235 will not result in a rate rollback. The \$0.47 rebuild surcharge per subscriber, per month justified in the Form 1235 was not included in our broadcast basic rate calculations for 2004. We do not plan to include the \$0.47 surcharge per subscriber, per month in our broadcast basic rate calculations for 2005. In addition, the broadcast basic rate went down significantly in 2004 from \$8.50 to \$6.35. Thus, the City will not secure any rate reduction based on a denial.
2. Although the consultant admits detecting no unallowable cost categories in Adelphia's calculation of Network Upgrade Surcharge, they did not provide any calculations to support their recommendation for denying the FCC Form 1235.
3. If we are forced to appeal this action to the FCC, then both the City and Adelphia may incur substantial legal costs. Adelphia will not pay the City's legal expense to defend Adelphia's appeal of the rate denial.

Adelphia remains confident that a denial will not withstand the scrutiny of an FCC appeal. We respect the City's decision to rely on the advice of consultants in these complex matters; however, we place great value on maintaining a direct dialogue with the City. In so doing, I am confident that we can better serve you, our local franchising authority, and our customers without engaging in unnecessary and inappropriate costly appeals.

I look forward to working directly with you to resolve this matter in a timely, informal and customer-friendly matter. Please do not hesitate to call if you have any questions. I can be reached directly at 216-575-8016 extension 3415. Sincerely submitted, Lee C. Shapiro, Director of Government &

Public Affairs.”

“James Redhed, 3236 Redwood Road. Good evening, Mr. Mayor, Members of Council. Amidst all of the charges and counter-charges flying around Issue 1, there was one particular claim made here that I would like to object to that I don’t think requires lawyers or judges and that was the use of the term, “undemocratic”, to describe it. Given that the very definition of democracy is government by the people, at least in our form of government. I don’t think there is anything more direct form of democracy than a public initiative such as Issue 1 or Issue 35 earlier this year just in Cleveland Heights. We’re not relying on elected officials that may or may not do as we want. People can vote exactly as they please based on what they know and believe. I would contrast that, for instance, with what happened in Massachusetts about a year ago where four judges decided that the entire state, a similar definition somehow defining that definition in a way that had eluded all such judges in the previous 200 plus years there - and then the legislature denied the people an opportunity to vote on it. That I would consider undemocratic. So, while I respect anyone’s opinion regarding where they stand on Issue 1, I think the use of undemocratic was particularly inappropriate and I find it inconsistent with statements that I agreed with at the time when Issue 35 was in process and passed. We heard in these very chambers, “Democracy in action, democracy at work, let the people decide’, and those were all true and I think those should have been considered to Issue 1 as well. Thank you.”

“Mani Ayodele, 2849 Mayfield Road. I would like to commend traffic and safety patrol of Cleveland Heights for securing the Mayfield and Coventry area. If you recall, I brought that issue up a while back and since then they’ve done a much better job. I’d also like to thank Mr. Tomaro for his input and Mr. Downey and the rest of the law-making body of Cleveland Heights because joint traffic safety helps prevent drug trafficking.

REPORT OF THE CITY MANAGER

Mr. Downey stated, “Thank you very much, your Honor. Just briefly, this evening, in Council’s packets you received a copy of Bid Document 2004-26. That is also known as the purchase of gravel, sand and limestone. The lowest and best bidder for gravel was Cleveland Central in the amount of \$13.85 a ton and for sand and limestone the lowest and best bidder is the ACME Company, in the amount of \$8.95 a ton and \$10.65 a ton respectively. Bid Document No. 2004-27, the material and labor to provide a water and sewer billing service. The lowest and best bidder is Bridgestone/Firestone in the amount of \$.385 or thirty-eight cents the first year, thirty-eight cents the second year and \$.389 the third year. Your Honor, I would request that this be made a matter of record.”

Mayor Kelley made them a matter of record.

REPORT OF THE DIRECTOR OF FINANCE/CLERK OF COUNCIL

Mr. Malone stated, “Thank you, your Honor. I need to notify Council that one notice has been received from the Ohio Department of Liquor Control advising that application has been made by the following: JBC of Cleveland Heights, Ohio Inc., dba Jillians, transfer D5 and D6 permits from Jillians Billiard Club of Cleveland Heights Ltd., A Limited Partnership, dba Jillians, premises 12459 Cedar Road, 44106. Your Honor, I need to make this a matter of record.”

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

REPORT OF THE MUNICIPAL SERVICES COMMITTEE

Council Member Caplan stated, "Thank you. We have two pieces of legislation. The first is Ordinance No. 164-2004(MS), Second Reading, amending Ordinance No. 89-1998 and subsection (b) of Section 911.01 of the Codified Ordinances of the City of Cleveland Heights to establish local rate charges for sewage treatment service to be charged in the City of Cleveland Heights effective December 1, 2004; and declaring an emergency. It is necessary to make significant improvements to the City's sewer system to meet State and Federal environmental standards and Northeast Ohio Regional Sewer District requirements and you've all seen all the sewer projects around town that have been going on for many years. Additional improvements are necessary to correct certain identified deficiencies in the system such as inadequate capacity and deteriorating lines. Current revenue is inadequate to fund these necessary capital improvements. Therefore, be it ordained by this Council that the City of Cleveland Heights shall amend the subsections that I have just stated and amend them so the local sewer charge shall be Seven Dollars and Five Cents (\$7.05) per 1,000 cubic feet of water consumed, as shown by the records of the Water Department of the City based upon actual water meter readings. The local sewer charges established in this Ordinance shall be effective December 1, 2004. Notice of passage shall be given and this Ordinance shall be declared an emergency for passage tonight. I offer Ordinance No. 164-2004(MS) for passage tonight."

Mayor Kelley accepted Ordinance No. 164-2004(MS), Second Reading.

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

Nays: None

Ordinance passed

Council Member Caplan continued, "Thank you. Now, I have Ordinance No. 165-2004(MS), Second Reading, amending subsection (e) of Section 935.02 "Fees Established" of Chapter 935 "Solid Waste Collection and Disposal" of the Codified Ordinances of the City of Cleveland Heights to provide for an increase in fees for the collection of solid waste from properties within the City; and declaring an emergency. By Ordinance No. 105-1990, this Council established a fee schedule for the collection of solid waste from properties within the City. By Ordinance No. 44-1992 this Council was able to decrease those fees. Since 1992, the cost of solid waste disposal for the City has steadily increased.

That is one of the reasons why I always talk about recycling, since if we recycle we don't have to pay for garbage disposal.

Therefore, be it ordained by the Council of this City that Subsection (e) of Section 935.02 shall be and hereby is amended to henceforth read as follows:

Commencing December 1, 2004, the City shall assess against all owners of property receiving City solid waste disposal service a charge for the service in accordance with the following schedule: for each single family dwelling receiving the homestead rate for sewage treatment service pursuant to Codified Ordinance Section 911.01(c), a charge of One Dollar and Fifty Cents (\$1.50) per month; for each single family dwelling not receiving the homestead rate, a charge of Three Dollars and Twenty-five Cents (\$3.25) per month; for each dwelling unit in a multiple dwelling a charge of Three Dollars and Twenty-five Cents (\$3.25) per month; and for all others a charge of Seven Dollars and Fifty Cents (\$7.50) per month. The charge for the service shall be billed to the owner of the property monthly and shall appear on the monthly statement for water and sewer charges.

The effective date of the rate increase in this Ordinance is December 1, 2004. Notice of passage shall be given and be put in the papers and this Ordinance shall be declared an emergency measure for passage tonight. I offer Ordinance No. 165-2004(F) for passage tonight."

Mayor Kelley accepted Ordinance No. 165-2004(MS), Second Reading.

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

Nays: None

Ordinance passed

REPORT OF THE PLANNING AND DEVELOPMENT COMMITTEE

Vice Mayor Montlack stated, "Thank you, your Honor. There is no legislation from this committee tonight. I would like to remind everyone that a two-family renovation project that has been undertaken, really, with the collaboration of the First Suburbs Consortium and the City of Cleveland Heights, which has really pitched in is now nearing completion at 3388 Beechwood Avenue. With the work almost completed and ready to be shown the Cleveland Heights Housing Service has, once again, stepped into the fray and is taking care of showing as well as coordinating the purchase offers for these two units which are being sold as condominium units. The phone number for the Cleveland Heights Housing Service for anyone who might be interested in taking a look is 216-291-5959. Although a sales pitch is really not needed, because we think the units will sell themselves, I would say that one thing to be considered by anyone who may have an interest, especially someone who may be a first time homeowner or seeking to be that is that many of the costs; the planning, the design and all factors have really been paid for through generous grants so that the costs to the purchaser are as low as you can possibly get. I would commend you to think about this if you are in the market. Again, that phone number for the Cleveland Heights Housing Service is 291-5959. That completes the report of this committee."

REPORT OF THE PUBLIC SAFETY AND HEALTH COMMITTEE

Council Member Evans stated, "Thank you, your Honor. I'd like to present Ordinance No. 169-2004(PSH), amending Sections 1311.06, 1311.07, 1311.071, 1311.09, 1311.10, 1311.11, and subsections (a) and (c) of Section 1367.05 of Part Thirteen, Building Code, of the Codified Ordinances of the City of Cleveland Heights; and declaring an emergency. It would be in the best interest of the City and its residents to increase fees for the issuance of building permits so that such fees cover more of the associated administrative and inspectional costs incurred by the Building Department. Most of these fees charged by the City for the issuance of building permits have not been increased since the late 1980's and has realized that the City's labor costs and other expenses related to the issuance of such permits have increased dramatically during this time period.

Therefore, this is a very lengthily ordinance and most of it I'm going to incorporate by reference. The first section deals with Section 1311.06 titled Permit Fees Generally. These fees cover three different segments and that is New Construction of Commercial Buildings and Additions to such Commercial Buildings - and New Construction of Residential Structures and Additions to those Structures - and Repairs/ Alterations to Existing Commercial and Residential Buildings. There are a number of amendments and changes so if anyone is interested please contact our Clerk's office for a copy of this legislation. Then there is Section 2 which is Section 1311.07 Sidewalks, Driveways and Curb Cut Fees. Those fees have been changed. Section 3 deals with Section 1311.07 Parking Lot Fees. Those fees have been increased. Section 4 is Section 1311.09 titled Plumbing and Sewer Fees. There are changes there. Section 5, the first sentence of Subsection 1311.10, titled "Electrical Fees," subsection (a) through (1) remain unchanged. Then in Section 6 Section 1311.11, titled "Heating, Refuse, Burning and Ventilation Fees,"

there are a number of amendments. Section 7, this is the one that deals with Subsections (a) and (c) of Section 1367.03, titled "Fees: Changes in Business Occupancy," and in that there are two parts. Subsection (b) remains unchanged but there are changes in Subsection (a) titled Occupancy Certificate Fee and (c) titled Changes: New Certificate of Business Occupancy: Fees. I'd like to present Ordinance No. 169-2004(PSH) for passage this evening."

Mayor Kelley accepted Ordinance No. 169-2004(PSH).

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

Nays: None

Ordinance passed

Council Member Evans continued, "Next, is Ordinance No. 170-2004(PSH), authorizing the renewal of an agreement with the Cuyahoga County General Health District for public health services; providing compensation therefor; and declaring an emergency. It would be in the best interest of the City and its residents to renew this agreement for the calendar year 2005. Section 1 reads that the City Manager is authorized and directed to enter into an agreement with the Cuyahoga County General Health District for the provision of certain public health services to the City and its residents which are required to be provided under State law, including, without limitation, school health services, community health services, family health services and environmental health and sanitation services. The agreement shall be for a period of one year, commencing January 1, 2005. The fee for the basic mandated services shall be in the sum of One Hundred Sixty-seven Thousand Three Hundred Fifty-nine Dollars (\$167,359.00). The agreement shall further include an addendum which authorizes the City Manager to request certain additional, non-mandated health services to be provided by the District at its standard rates for such services, with the cost of such services not to exceed Seventy Thousand Dollars (\$70,000.00) without further authorization from this Council. All documents shall be approved by the Director of Law. I'd like to present Ordinance No. 170- 2004(PSH) for passage."

Mayor Kelley accepted Ordinance No. 170-2004(PSH) for passage.

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

Nays: None

Ordinance passed

Council Member Evans continued, "Next, is Ordinance No. 171-2004(PSH), authorizing an agreement with Statewide Ford Lincoln Mercury, Inc. for the purchase of thirteen (13) new 2005 Ford Crown Victorias for the Police Department through the Ohio Department of Administrative Services Cooperative Purchasing Program; providing compensation therefor; and declaring an emergency. The City Manager has determined that the selected vehicles may be purchased through this State Cooperative Purchasing Program at a lower price than could be obtained through bidding, and that it would be in the City's best interests to purchase said vehicles by this means. Therefore, Section 1 reads that the City Manager is authorized to enter into an agreement with Statewide Ford Lincoln Mercury, Inc. for the purchase of vehicles for the Police Department through the Ohio Department of Administrative Services Cooperative Purchasing Program, in accordance with the requirements of Ohio Revised Code Section 125.04 and this Council's Resolution No. 115-1988. The agreement shall provide for the purchase of thirteen (13) new 2005 Crown Victorias for the Police Department, at a total cost, with necessary options, not to exceed Three Hundred Thousand Dollars (\$300,000.00). All agreements shall be approved as to form by the Director of Law. I'd like to present Ordinance No. 171-2004(PSH) for passage."

Mayor Kelley accepted Ordinance No. 171-2004(PSH).

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

Nays: None

Ordinance passed

Council Member Evans continued, "Next is Resolution No. 172-2004(PSH), authorizing the City Manager to enter into an agreement with the Cities of Shaker Heights and University Heights for the acquisition and maintenance of an upgraded E911 system for fire dispatch; providing compensation therefor; and declaring an emergency. A representative of each of the three Cities has recommended that the Cities jointly purchase an upgraded E911 system for fire dispatch and enter into a maintenance agreement for the system. Under the recommendation of the Cities they would share the capital cost of the equipment equally and the share of the maintenance cost for each City would be determined in accordance with the formula set forth in the existing Joint Dispatch Agreement. Such purchase shall be of benefit to the Cities and their residents. Therefore, in Section 1 the City Manager is authorized to enter into an agreement with the Cities of Shaker Heights and University Heights for the acquisition and maintenance of an upgraded E911 system for fire dispatch. The agreement shall be substantially in accordance with the agreement on file with the Clerk of Council, and the total obligation of the City of Cleveland Heights shall not exceed the sum of Two Hundred Thousand Dollars (\$200,000.00). The agreement and all related documents shall be approved as to form by the Director of Law. I'd like to present Resolution No. 172-2004(PSH) for passage."

Mayor Kelley accepted Resolution No. 172-2004(PSH).

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

Nays: None

Resolution passed

REPORT OF THE ADMINISTRATIVE SERVICES COMMITTEE

Council Member Dietrich stated, "Thank you. I have no legislation but I do have an appointment to make. Last week we appointed Matthew Alden to take Sue Nigro's position on the Fair Housing Board and that had still left us with another vacancy on the Fair Housing which we'll fill tonight. Bill Edwards, Jr., has resigned from the Fair Housing Board after serving for five years and so to replace him, I'd like to offer Sue Doerfer. Her term would begin immediately and extend to March 31, 2008. This is a board that has term limits. Members can only serve for two terms on the Fair Housing Board. So I would like to thank Bill Edwards, Jr., for his service and offer Sue Doerfer as his replacement."

Second by Council Member Wilcox.

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

Nays: None

Appointment passed

Council Member Dietrich continued, "Just a comment. I've been getting phone calls from people who are upset about what they have been reading in the papers about behavior problems at Heights High. The articles talked about this discrepancy whether this should be viewed as a school problem or a community problem and I just want to say from my point of view I think that discrepancy is semantic. I think that any issue like this is something that we all have to share in and I just want to reassure people that there's a lot of communication and cooperation that goes on between the city and the school district. Mayor Kelley is or has - I'm not sure - meeting with Superintendent Deb Delisle and our City Manager Bob Downey and Chief of Police, Chief Lentz are also meeting with her and the police have

been providing some extra services. The city and schools have a really good working relationship. We work with them on all sorts of things and this will be no exception. This will not be an easy problem to fix. I think it's important not to blame the public schools for behavior that kids bring with them. I think it's the result of family expectations and it's something that won't change until family expectations change. So this won't be solved overnight but of course, it is something that requires the attention of all of us; families, schools, city, and while it's not a challenge that I think any of us welcome, it's certainly a challenge that we will accept and work together on. That's all I have."

REPORT OF THE COMMUNITY RELATIONS AND RECREATION COMMITTEE

Council Member Caplan stated, "Thank you. There is no legislation this evening. I'm going to follow up on the Municipal Services report to remind you to pay attention about recycling. It's not hard to do. I keep talking about how to do it. You know that mail that comes, those catalogs and the magazines and the newspapers that you get and all that junk mail that you throw away that's not even opened. Throw it away in a paper bag and put that paper bag out on your lawn and it will be taken away and recycled and therefore, it doesn't have to go into land waste and we save the environment and it's recycled and it's easy to do. So, please - you're going to hear from me for the next many months - I encourage you to try recycling. You'll see how you can minimize the amount of solid waste that comes out of your house and it's really better for the environment. So that's one thing.

Secondly, along with all of that, I'd like to congratulate the Public Works Department on the wonderful job that they're doing about leaf collection. All those leaves, those beautiful colors have turned brown and now they are all on the ground or almost all on the ground, anyway. It's quite an operation and I think that all of the public works department that are participating in moving those leaves off of your lawn (is where they're supposed to be and not on the street) and moving them into the street and then they're collecting them and the greatest majority of those leaves are turned into mulch so that it's recycled. That's a wonderful thing and if you want to see the mountains of leaves you can go to the Forest Hill parking lot that's off of Forest Hill Boulevard (Forest Hill and Lee) and you can see a mountain of leaves and then there is a mountain of mulch which will then be available for free to the citizens in our community. So we recycled those leaves but it's quite a system that really works and I want you to know that I've seen that system first-hand. I have small grandchildren and it's free entertainment to watch all those trucks do their job and they're doing a great job.

The last, but certainly not least, and it's not about community relations but it is about the past election. It was amazing to see how many people came out to vote. Although the candidates that I had been supporting didn't win, the thing that I'm most struck by and really quite saddened is that not only our state but also eleven states altogether - in one way or another - do discrimination against one group. And although one of the citizens before in the beginning of our meeting talked about one of us who had used the word, "undemocratic" and I don't think it was I. I do think that when we discriminate against someone in our community it is undemocratic. Democracy is about giving everyone an equal voice, an equal opportunity and so I hope that the people in our community will remain steadfastly committed to respecting each member of our community - in our state - in our nation and I encourage each of us to search for ways to champion the values of diversity and tolerance and these are values that many of us believe in. I am saddened by what the passage of those amendments to the constitutions of eleven states - what that meant. I think it's somewhat institutionalized hate and distresses me to no end. Thank you. That's all that I have."

REPORT OF THE FINANCE COMMITTEE

Council Member Wilcox stated, "Thank you, your Honor. There are three pieces of legislation

from the Finance Committee tonight. The first one is Ordinance No. 173-2004(F), approving Adelphia's proposed maximum permitted and actual basic service tier rate; approving Adelphia's proposed hourly service charge and proposed maximum permitted and actual equipment rental, service and installation rates, effective March 1, 2004 through February 28, 2005; disapproving Adelphia's proposed monthly network upgrade surcharge; and declaring an emergency.

Before I read this legislation, because it's quite lengthy I wanted to just briefly state that what Council and the City does and doesn't do with respect to the cable television rates. First of all, Council and the City do not establish the cable television rates. These rates are determined by information that is supplied by Adelphia, our cable provider, and our role primarily is to review that information and make sure that it complies with certain FCC formulas. In the case that it does meet those formulas then we are bound to approve those. When it doesn't meet those formulas then we disapprove it or if we have inadequate information we disapprove it. I just wanted to clarify that. The City does not actually establish the rates, we simply review the information that's provided to us.

The City has granted a cable television franchise to Telerama Inc. Now doing business as Adelphia Communication Corporation as of June 2, 1997. The City is certified to regulate the basic cable service tier rate and related equipment rental, service and installation rates. Pursuant to the FCC regulations on or about December 1, 2003, Adelphia filed with the City its annual FCC Form 1240 proposing a Maximum Permitted Basic Tier Rate of \$8.44 and annual FCC Form 1205 to justify rates for the period of March 1, 2004 through February 28, 2005. On that date, the City also received from Adelphia an Abbreviated Cost of Service Filing for Cable Network Upgrades on FCC Form 1235 and that is proposing Maximum Permitted Network Upgrade Surcharges of \$0.47 per month, per subscriber. The City then issued a tolling order and then Adelphia's filing of its Form 1235 on a pre-approved basis is contrary to FCC regulations and then thereafter Adelphia amended that form from a pre-approval to a final filing. Adelphia has not implemented these service charges and that's the \$.47 per month I talked about. It has been necessary for the City to make numerous requests to Adelphia for additional information and clarification in connection with all of these forms that were filed. Adelphia's 2004 FCC form 1240, 1205, and 1235 as well as other rate justification information requested of Adelphia and supplied to the City by Adelphia are on file with the Council Clerk and incorporated into this ordinance by reference. Section 1 of this Ordinance then provides as follows based on the information presented at the City Council's meeting to consider this Ordinance, the information submitted by Adelphia, the documents on file with the Council Clerk and the advice of the City's cable television legal consultants, the City makes the below listed findings and orders regarding the FCC Form 1240 and 1205.

I will just summarize these approved rates which are for the period March 4, 2004 through February 28, 2005. First of all, the Maximum Permitted Basic Tier Rate of \$8.44 per month is approved. The Actual Basic Tier Rate that's actually charged is \$6.35 per month is approved. The proposed Hourly Service Charge maximum of \$44.79 is calculated in accordance with FCC Regulations and is therefor approved. The Maximum Permitted Equipment Rental, Service and Installation Rates as shown on the Table in this Ordinance are calculated in accordance with FCC Regulations and are approved. The Actual Equipment Rental, Service and Installation Rates as shown in Table I are also approved and that is in this Ordinance and they are on file with the Clerk if anybody wants to go through there but I am not going to read them all here tonight. Section 2 of this Ordinance then provides as follows: Based on the information presented at the City Council's meeting to consider this Ordinance, the information submitted by Adelphia, the documents on file with the Council Clerk and the advice of the City's cable television legal consultants regarding Adelphia's Amended FCC Form 1235, the City makes the following listed findings and orders and I will summarize those. Adelphia has failed to provide sufficient information in the Amended Form 1235 and supporting documentation from which to determine whether the Network Upgrade Surcharge of \$0.47 per month, is calculated in accordance with FCC Regulations.

For reasons stated in the attached memorandum, which is attached to this Ordinance, Adelphia has failed to provide sufficient information in the Amended FCC Form 1235 and supporting documentation, from which the City can calculate, in accordance with FCC regulations, an appropriate Network Upgrade Surcharge and the one-year time period in which the City must rule on Adelphia's Network Upgrade Surcharge will expire on November 30, 2004. The proposed Network Upgrade Surcharge of \$0.47 per month, per subscriber then is therefore disapproved. And finally, Adelphia is ordered to file a FCC Form 1235 with supporting documentation and information in conformance with the attached memorandum. Section 3 of the Ordinance, the City reserves the right to reconsider this Ordinance for the sole purpose of further reducing rates should new information arise which was not disclosed by Adelphia or should modification or clarifications to FCC rules and regulations so provide and permit. Section 5 of this Ordinance is notice of passage and Section 6 declares it to be an emergency measure. I offer Ordinance No. 173-2004(F) for passage tonight."

Mayor Kelley accepted Ordinance No. 173-2004(F) and commented, "Adelphia filed its FCC Form 1235 with the City of Cleveland Heights in 2003. It sought to impose a surcharge of \$0.47 per customer per month until 2015, a period of 12 years, when the upgrade in Cleveland Heights had already been completed and had provided service to subscribers for more than 7 years which dates back to 1996. Furthermore, because the Cleveland Heights' system was completed in 1996, the 12 year useful life of its distribution facilities ends in 2008. Yet, Adelphia seeks to collect \$0.47 per month surcharge for an additional 7 years beyond the useful life of the Cleveland Heights' distribution facilities which would be 19 years after the system had been rebuilt completely. Allowing the cable operator to defer collecting a surcharge on a rebuilt system for a period of 7 years after is unfair to subscribers and poor public policy. Furthermore, if you take this \$5.64 and you multiply it by the 12 years that they expect our customers to pay, the average customer would pay \$67.68 and that's an actual number. If you take the number of possibly 13,000 customers in Cleveland Heights (and that's my estimate) and no one probably knows for sure how many customers Adelphia has from one month to another with the emerging of the dish and other things especially in our community with the service levels that we see from time to time, we're talking about - now this is \$67.68 times the 13,000 customers that is \$879,840 that we're talking about. So this is not chump change that this Council and our law department is working on. If there were 15,000 customers which there may have been at one point in time when it was Cablevision, we're talking about over a million dollars. Again, this is not chump change. I applaud our law director for taking this position, researching this position and I tell Adelphia to get your act together. This is the second time you've been here this month and I think these issues are better worked within the structure of either our cable commission, our law department instead of coming here and making sounds like you made a sound decision. To actually ask our subscribers to pay to the year 2015 on a system that won't even be around - that's not only unfair, that's very foolish in this community."

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

Nays: None

Ordinance passed

Council Member Wilcox continued, "Next, I have Resolution No. 174-2004(F), accepting the amounts and rates as determined by the Budget Commission; authorizing the necessary tax levies and certifying them to the County Auditor; and declaring an emergency. Council has previously adopted a Tax Budget for the fiscal year commencing January 1, 2005. The Budget Commission of Cuyahoga County, Ohio has certified its action thereon to this Council, together with an estimate by the County Auditor of the rate of each tax necessary to be levied by this Council, and what part thereof is without and what part within the ten mill tax limitation.

Essentially what that means is the inside millage is that which is permitted to be levied by law

and the outside millage is that which has been voted on by the taxpayers.

Section 1 of this Resolution provides that the amounts and rates as determined by the Budget Commission on certification are hereby accepted and Section 2 levies on the tax duplicate of the City the rate of each tax necessary to be levied within and without the ten mill limitation as follows:

I just want to summarize that. The Budget Commission's estimate of the amount of monies to be collected from the inside millage is approximately 3.3 million and that's based on millage of 3.72 mills and that's the same amount that was levied last year. The outside millage totals approximately 8.3 million and that's compared to last years - 9 million. The outside millage amount is 9.38 mills this year as compared to last years 10.28 and the reason for that reduction is our bond retirement millage has been reduced from 2.8 to 1.6 mills and that's because of the recreation levy that went off the ballot and was paid off this year and then of course we had the increase of .7 mills from the recreation levy that was recently approved. Those are the new millage rates for 2005. I offer Resolution No. 174-2004(F) for passage tonight."

Mayor Kelley accepted Resolution No. 174-2004(F).

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

Nays: None

Resolution passed

Council Member Wilcox continued, "Next, I have Resolution No. 175-2004(F), authorizing an agreement with Weltman, Weinberg & Reis Co., L.P.A. for professional collection services; and declaring an emergency. The City's Revenue Recovery and Law Departments collect the majority of the unpaid sums due the City. The City, however, does not have the technical and other resources necessary to locate debtors who have moved without forwarding addresses. It would be in the best interest of the City and its residents to retain the services of a firm with expertise in this area. The services are professional services for which no bidding is necessary. Section 1 of this Resolution authorizes the City Manager to enter into an agreement with Weltman, Weinberg and Reis Co., L.P.A. for professional services relative to the collection of such specified accounts and judgments owing the City as referred by the Director of Finance. The agreement shall provide for the City to pay fees in the sum of twenty-five percent (25%) of monies collected, plus costs, and shall be terminable by either party upon thirty (30) days notice. I offer Resolution No. 175-2004(F) for passage tonight."

Mayor Kelley accepted Resolution No. 175-2004(F).

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

Nays: None

Resolution passed

Council Member Wilcox commented, "I had one comment and I can't get away from the election. I always like to comment. Actually, I would like to thank the voters from the City of Cleveland Heights for their overwhelming support of Issues 27 and 28 that passed by well over 60% on election day and certainly that will make my job and our Finance Director, City Manager and everybody else on Council a lot easier over the next several years. It's an important commitment by the citizens of our community to our parks and recreation facilities and also to sound fiscal management of this city. So I sincerely appreciate all the support from our voters out there and that concludes my report."

REPORT OF THE MAYOR

Mayor Kelley added, "I, too, want to thank the voters for their overwhelming support for Issue 27 and 28. I want to thank you as far as Issue 27. You will see a sound investment in our recreation, parks and cultural facilities. These dollars will be invested wisely to improve the facilities, the capital needs of the facilities. I want to thank everyone for their support. It was very important that we get this done. We did it in a very prudent way and did not go and ask for a lot of mills. We asked for .07 of a mill and it will be on your tax duplicate in January. Right, Councilman Wilcox?"

Council Member Wilcox answered, "Correct."

Mayor Kelley continued, "We do have a reduction coming up. I want to thank everybody. It's important to reinvest in our parks and in our recreational needs and our cultural needs so you'll see some things happening over the next few years and many, many years for the future.

As far as Issue 28, it was important for our income tax collection, those who are S Corps and I know we have a few people on this Council that are in that category, that they continue to pay their fair share or whatever that share may be to keep our income tax collection healthy in such a flat economy. It was important that our voters also reaffirmed that by nearly a 70% vote, I believe, 65% for Issue 27 and 70% for Issue 28. I want to thank the voters for that overwhelming support on both of those issues. It was very kind of the voters to reach out and accept us and accept the opportunity to send you some information on that into your homes and into your businesses, but to come back with that overwhelming support in our community - we appreciate it. As a Council - it makes our job easier and you will see some improvements right away next year in the parks and recreation and cultural. We can't do it all at once. There are a lot of things that can and will be done in the future. It won't happen on Day 1. Some things we're going to do. You have made some things easier. You have made our community a lot more advantageous place for people to live in - to continue living here - for people to move here and we're going to make some of these programs happen for all our people, whether they're young or old, seniors or wherever you live - it'll have a direct affect on you.

One other thing, I guess it's a happy but a sad note, tonight we say good-night to Ron Petransky, who has been our cable operator for over ten years. Is he allowed to step out of that back room? Ron, can you come out and say good-bye? This is your one chance. Come on up. You are a Cleveland Heights resident but why don't you tell us where you're going and what's going on with you?"

Mr. Petransky stated, "Quite unexpectedly I'm going to Case University. I'll be a production manager for media vision which is the university's audio-visual department. I'll be working with a team to incorporate video for their website for instructional learning for the students. It's very exciting, but it's also sad, because I'll be leaving you guys. It's been a great ten years and I've learned a lot and I'll be around."

Mayor Kelley stated, "Well, Ron, I know Council wants to say a few words, so we'll start with the Vice Mayor."

Vice Mayor Montlack stated, "There is a lot that we can say. Your professionalism, your willingness to do 110% both in and out of City Hall and you - just being a great guy and fun to be around. All of those combined have made it such a pleasure to be on your team. Thank you."

Council Member Evans added, "Ron, thank you so much. You were the one - you and your crew who set up our meetings to be televised on cable. I can recall the days of making all the decisions and

you letting us know what all the supplies that were needed and it was a nice easy transition, actually, and we're really thankful for that and I thank you so much. Good luck to you and your little family."

Council Member Caplan added, "Actually, we've all grown up together in some ways in that we started with regular meetings and people came and never did this on tv and you brought us into this new century. Actually, you did a great job for us. It was such enthusiasm and caring. Thank you so much. It's been sort of like being part of a whole family together. We're going to miss you, but we know where you live so we hope to see you around at those Easter Egg Hunts that you came to and filmed and with your family. We wish you lots of good luck. Thank you for all you've given us."

Council Member Dietrich stated, "Well, Ron, it's congratulations to you. It's a wonderful opportunity and we will be sad. So, just one of those times it's a little bit of good and a little bit of bad. I feel really proud of the whole end of things that you run. I feel like we're really state of the art and you're always changing and making us know a little bit more of where it's at and you always do it with a smile and I think Monday nights will be a nice time for you to be home with your little boy and your little girl and best luck to you."

Council Member Wilcox added, "Ten years. I guess that means I won't be the junior member of this group anymore. It's a great opportunity at Case and we know that it's our loss but Case's gain but we are going to miss you on Monday nights but come back here and feel free to make public comment during our meetings."

Mr. Petrasky added, "This is kind of awkward. This is the first time I've actually been out here for a meeting."

Council Member Wilcox continued, "Come back again and visit us and best of luck to you."

Mr. Petrasky thanked everyone.

Mayor Kelley continued, "I say good-bye to you, but it's really not good-bye, I know I'll see you around. You've really taken us about as far as anyone could take us in this cable-age; council meetings, out in the field. I mean you did every job you could. You never complained, at least not to me. You are great to work with, but this sounds like a great opportunity for you and your family; your wife and your two children. We're certainly going to miss you, everyday around here, but this is your baby. You made it happen here, it's time for you to go somewhere else. We're certainly going to miss you but our loss is certainly Case's gain. You know you can always come back home to Cleveland Heights. You live here on Quarry Road and come to the meetings once and while. Maybe you can pitch in and pick up a camera and help out and do things. You are such a part of bringing us into this information age and really connecting with our residents. You make it happen under the direction of Susanna and we really owe you so much for that. I don't think words can express it. We're going to miss you every Monday night but I'm sure Monday night football will finally come on at your house and you'll be able to teach your son that block at age five and how to tackle and all that stuff he's missing you. But we are going to miss you. You played such an important role here. I think this is the first time that we kind of brought somebody out here and embarrassed them a little bit like we're doing to you. But really we'll miss you. We consider you a great friend and now you can campaign for - (joking) it's great to have. We wish you nothing but the best in your new venture. Best of luck to your family, your wife and your two children and we're going to miss you from the bottom of our hearts. You are a great guy. Thank you."

Mr. Petrasky again thanked the Mayor.

Mayor Kelley continued, "We can give him a clap. Having said that, the meeting is adjourned at 8:45 p.m. Our next meeting will be Monday, December 6, 2004. Everyone have a happy and blessed Thanksgiving. Get with your family and friends. Have a safe time if you're driving and always come back to Cleveland Heights."

Respectfully submitted,

Edward J. Kelley, Mayor
President of Council

Thomas K. Malone
Clerk of Council

/mwc