

**MINUTES OF THE REGULAR MEETING  
MASSILLON CITY COUNCIL  
HELD TUESDAY, FEBRUARY 18, 2020**

**COUNCIL PRESIDENT ISTNICK** – Welcome to the Massillon City Council Meeting for Tuesday, February 18, 2020. We have in attendance with us the following city officials: Mayor, Kathy Catazaro-Perry, Law Director, Justin Richard and also from the Law Dept., Andrea Bartos, Chief Engineer, Jason Popiel, Community Development Director, Economic Development Director, Dave Maley, Income Tax/Budget Director, Lori Boron, Code Enforcement Officer, Jimmy Johnson. On the wall to the left are agendas if you wish to follow the meeting. Also, if you look at the agenda, under item #5 is where the public can speak on any item that appears on tonight’s agenda and then under item #17 is where the public can speak on any item that does NOT appear on tonight’s agenda. I want remind anyone with cell phones, please turn them down or set them to vibrate.

**COUNCIL PRESIDENT ISTNICK** – Roll call.

**1. ROLL CALL**

Roll call for the evening found the following Council Members present: Jill Creamer, Mike Gregg, Nancy Halter, Ted Herncane, Ed Lewis, Linda Litman, Mark Lombardi, Megan Starrett and Jim Thieret.

Roll call of 9 present

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. All present and accounted for. Councilman Lewis.

**2. INVOCATION**

**COUNCILMAN ED LEWIS IV**

**3. PLEDGE OF ALLEGIANCE**

**LED BY COUNCILMAN LEWIS**

**4. READING OF THE JOURNAL**

**COUNCIL PRESIDENT ISTNICK** – Madam Clerk, are the minutes of the previous meeting transcribed and open for public viewing?

**COUNCIL CLERK ROLLAND** – Yes, they are.

**COUNCIL PRESIDENT ISTNICK** – Are there any additions or corrections to be made?

**COUNCIL CLERK ROLLAND** – No, there are not.

**COUNCIL PRESIDENT ISTNICK** – Then the minutes stand approved as written.

**5. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS ON THE AGENDA**

## 6. INTRODUCTION OF ORDINANCES AND RESOLUTIONS

### **ORDINANCE NO. 21 – 2020**

**BY: STREETS, HIGHWAYS, TRAFFIC AND SAFETY COMMITTEE**

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for and receive sealed bids and enter into a contract with the lowest and best bidder, upon the approval of the Board of Control, for the 2020 Catch Basin Replacement Project Contract #1, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Thieret.

**COUNCILMAN THIERET** – Thank you, Madam President. This is the first contract going out to bid for the catch basins for this year and they have asked for emergency language so they can get into the bidding process as soon as possible and, obviously, obtain the best results. Are there any questions on what we got so far? Seeing none, I make a motion to waive the rule for three readings and call this for a vote tonight.

**COUNCIL PRESIDENT ISNTICK** – Seconded by Councilwoman Creamer. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 21 – 2020 has passed. Ord. No. 22 – 2020.

### **ORDINANCE NO. 22 – 2020**

**BY: STREETS, HIGHWAYS TRAFFIC AND SAFETY COMMITTEE**

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for and receive sealed bids and to enter into a contract with the lowest and best bidder, upon the approval of the Board of Control, for the 2020 Catch Basin Replacement Project Contract #2, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Thieret.

**COUNCILMAN THIERET** – Again, this is part two of the list of catch basins that you already received. And again, the reason for the emergency language is to expedite the bidding process and get the best available contractors on line. Is there any further discussion or questions on this? Seeing none, I'd like to make a motion to suspend the rules for three readings and move this forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Creamer. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 22 – 2020 has passed. Ord. No. 23 – 2020.

**ORDINANCE NO. 23 – 2020**

**BY: STREETS, HIGHWAYS TRAFFIC AND SAFETY COMMITTEE**

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for and receive sealed bids and to enter into a contract with the lowest and best bidder, upon the approval of the Board of Control, for the 2020 Catch Basin Replacement Project Contract #3, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Thieret.

**COUNCILMAN THIERET** – Again, part three, the list that you already have of the catch basins. Is there any further discussion or questions on this ordinance?

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Litman.

**COUNCILWOMAN LITMAN** – Thank you, Madam President. Just to confirm that the work is to begin all at the same time for all three of these different sections of the City. Is that correct? Are these three different contracts; they all say to have work begin in May. So, I just wanted to make sure that even though they're on separate ordinances that the work is to begin simultaneously?

**COUNCILMAN THIERET** – Yes, that what the Engineer is actually shaking his head “yes”.

**JASON POPIEL** – That is our intent.

**COUNCILMAN THIERET** – That's the intent. That's why we want to get the emergency language so we can get it moving.

**COUNCILWOMAN LITMAN** – Thank you.

**COUNCILMAN THIERET** – Yes.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Councilman Thieret.

**COUNCILMAN THIERET** – I'd like to make a motion that we waive the rules requiring three readings and move Ord. No. 23 – 2020 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Creamer. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 23 – 2020 has passed. Ord. No. 24 – 2020.

**ORDINANCE NO. 24 – 2020**

**BY: FINANCE COMMITTEE**

AN ORDINANCE authorizing the Auditor of the City of Massillon, Ohio, to pay invoices that reflect a Then and Now (TAN) transaction over Three Thousand Dollars (\$3,000.00) per Ohio Revised Code 5705.41, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – As discussed at the Work Session, this is an ordinance that will allow our Auditor to pay bills that we have received in which the invoice predates the P.O. that was put in by the appropriate department, depending on which one it was. We received a list of situations in which this occurred. So, this is just the cleaning up of books, essentially, so that they can make those payments. Are there any questions or discussion this evening? Seeing none, I make a motion that we suspend the rules requiring three readings, bringing Ord. No. 24 – 2020 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Starrett. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

9 yes for passage

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 24 – 2020 has passed. Ord. No. 25 – 2020.

**ORDINANCE NO. 25 – 2020**

**BY: FINANCE COMMITTEE**

AN ORDINANCE making certain appropriations from the unappropriated balance of the 1419 Massillon Marketplace TIF Fund for the Wales Road Improvement Project, for the year ending December 31, 2020, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – Yes. This is for the appropriation of \$44,041.20 to continue on with the Wales Road Improvement Project. Are there any questions or discussion this evening? Seeing none, I make a motion that we suspend the rules requiring three readings, bringing Ord. No. 25 – 2020 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Starrett. Roll call for suspension.

9 yes for suspension

**COUNCIL PRESIDENT ISTNICK** – And for passage.

8 yes; 1 no for passage – Herncane voted “no”

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 25 – 2020 has passed.

**7. UNFINISHED BUSINESS**

**8. PETITIONS AND GENERAL COMMUNICATIONS**

**9. BILLS, ACCOUNTS AND CLAIMS**

The Repository	-	\$ 1,186.40	Publication of December Ordinances
The Repository	-	<u>71.20</u>	Publication of Notice of Public Hearing
		<b>\$ 1,257.60</b>	<b>Total</b>

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – I make a motion that we pay the bills.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Starrett. Roll call.

9 yes to pay the bills

**COUNCIL PRESIDENT ISTNICK** – The bills will be paid and charged to their proper accounts.

**10. REPORTS FROM CITY OFFICIALS**

Mayor’s Report	-	December 2019
Auditor’s Report	-	January 2020

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – I make a motion that we receive the Auditor’s Report.

**COUNCIL PRESIDENT** – Seconded by Councilwoman Starrett. Roll call.

9 yes to accept the Auditor’s Report

**COUNCIL PRESIDENT ISTNICK** – The Auditor’s Report has been accepted.

**11. REPORTS OF COMMITTEES**

**COUNCIL PRESIDENT ISTNICK** – Our next Work Session will be Monday, February 24, 2020 at 6:30 p.m. There’s also a Public Hearing on Monday, February 24, 2020 at 6:00 p.m. regarding a rezoning and our Work Session will follow at 6:30 p.m. Anyone else have anything?

**COUNCILWOMAN LITMAN** – Thank you, Madam President. I'd also like to remind everyone of the Police and Fire Committee meeting. That will be held Monday, February 10, 2020 at 5:30 p.m. and it will be here in Council Chambers.

**12. RESOLUTIONS AND REQUESTS OF COUNCIL MEMBERS**

**13. CALL OF THE CALENDAR**

**ORDINANCE NO. 7 – 2020**                      **BY: FINANCE COMMITTEE**  
**Tabled February 3, 2020 until February 18, 2020**

AN ORDINANCE making certain appropriations from the unappropriated balance of the 1100 General Fund for the City's share of the redevelopment of Duncan Plaza, for the year ending December 31, 2020, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – As the title describes which is the appropriation for the Duncan Plaza, the City share of it. We were holding off until a determination was made and a determination was made last week. So, with that being said, I would make a motion to vote on Ord. No. 7 – 2020.

**COUNCIL PRESIDENT ISTNICK** – Since that was tabled it just goes back to the first reading?

**COUNCILMAN LEWIS** – It was at third reading, I believe.

**COUNCIL PRESIDENT ISTNICK** – Okay. Seconded by Councilman Gregg. Roll call.

7 yes; 2 no for passage – Thieret and Herculane voted “no”

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 7 – 2020 has passed.

**14. THIRD READING ORDINANCE AND RESOLUTIONS**

**ORDINANCE NO. 8 – 2020**                      **BY: HEALTH, WELFARE, AND BUILDING REGULATIONS COMMITTEE**

AN ORDINANCE amending Chapter 521 “HEALTH, SAFETY AND SANITATION” of the Codified Ordinances of the City of Massillon, Ohio, by repealing Ordinance 521.04 “SIDEWALK OBSTRUCTIONS; DAMAGE OR INJURY”, and enacting an amended Ordinance 521.04 “SIDEWALK OBSTRUCTIONS; DAMAGE OR INJURY”, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Halter.

**COUNCILWOMAN HALTER** – Thank you, Madam President. Is there any discussion tonight? I know we've discussed this at great length. I'd like to remind everybody that this is a complaint driven ordinance and it's a work in progress. So, as things come up, we may have to amend it. We may have to work on it some more, but we need to get this passed this evening because spring is on its way and people are starting to put things out on the sidewalk.

So, did everyone receive the latest edition of this ordinance? Are there any questions? Mrs. Litman.

**COUNCILWOMAN LITMAN** – Thank you, Madam President. I just had a question as far as the violation being a minor misdemeanor. The question would be, if there is a complaint and our code enforcement officers go out and they determine that there is a violation, is there an immediate misdemeanor or ticket given to them or is it a matter of giving them a warning of some type and then allowing them time to fix the problem?

**COUNCIL PRESIDENT** – Would you like the Law Director to come up?

**COUNCILWOMAN HALTER** – Mr. Johnson.

**COUNCIL PRESIDENT ISTNICK** – Mr. Johnson, if you could come up?

**JIMMY JOHNSON** – Good evening. As always, we will work with the merchants as we work with the residents. There is never an immediate citation as far as that goes. To get that to happen, I would have to first send them a letter of violation, photograph the item and then approach the Law Director for a summons into court. I would rather correct the violation on-site in a teaching method rather than have to go through all that, but if we reach a point of no return, I would not hesitate to approach Justin for that.

**COUNCILWOMAN LITMAN** – Thank you.

**COUNCIL PRESIDENT ISTNICK** – Any other questions? Councilman Thieret.

**COUNCILMAN THIERET** – I'm really concerned that we are over stepping our bounds here. I firmly believe that safety issues have to be addressed always and consistently and I don't think this is particularly truconian, but by the same token, I think we're reaching into people's pockets here. These businesses came to town with their idea of their vision of what they wanted to do as far as a business in this community and when we restrict, when we confine them to someone else's vision, we've taken their vision away. I've talked to all the people that were affected by this and to the person, they disagree. But, some parts of this, particularly what type of apparatus or what type of fencing they can have, the color of lights and just simple things like, I think we have no business of dealing with. That being said, I would never vote for this in its present form.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Creamer.

**COUNCILWOMAN CREAMER** – Yes. Can someone answer; how many businesses will be "Grandfathered in" based on this new ordinance, if it's passed with these requirements?

**COUNCIL PRESIDENT ISTNICK** – Mr. Johnson, do you have that information?

**JIMMY JOHNSON** – I can't tell you exactly. I know that Kozmo's has existing fencing. The sidewalk there does not allow for the 5' access on the sidewalk. The wine cellar over here also has existing fencing. No way could they meet it. They also have a tree growing right there where the fencing is in the middle of the sidewalk. So, unless those areas are approved, there's no way that they would ever meet this, so, I would say they would be existing, non-conforming, at this point. New sidewalks would have to be laid, the whole nine yards, in that

area. So, existing, non-conforming there, and again, you say that's judgmental, but it is also, this is the common sense, and to Mr. Thieret's concerns, remember too, that your Historical Commission had input into this and this where the lights and the color of the fencing was limited. Code Enforcement does care if it's "sky-blue-pink", but your Historical Commission also had input to maintain the historical area of the downtown. So, just to refresh our minds that on where that's coming from.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lombardi.

**COUNCILMAN LOMBARDI** – I just want to go out and say here, with this ordinance, we're not making restrictions, we are actually taking a current ordinance on the books that is very restrictive and opening it up to less restrictions and Mr. Maley can probably clarify this a little bit more for me. But I believe the way the ordinance is currently written; we're not allowed to have anything on the sidewalks except merchandise for sell. Is that correct? No?

**COUNCIL PRESIDENT ISTNICK** – Mr. Maley.

**DAVE MALEY** – I think if you go back to the language you have in front of you, I believe 521.04, a thru e, Jim if you want to correct me on that too, where basically the language that was in the ordinance prior and then we've added all the additional language with your assistance, that basically and I don't think it specifically states that you can't have anything on the sidewalk.

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Litman.

**COUNCILWOMAN LITMAN** – It was my understanding that we had passed an ordinance that was described somewhat as a, or understood to be a temporary ordinance that eliminated everything from the sidewalks while we were going through our Streetscape.

**DAVE MALEY** – That's correct.

**COUNCILWOMAN LITMAN** – So, Mr. Lombardi is correct in saying that what's existing on the books right now is nothing on the sidewalks.

**DAVE MALEY** – Yes, you're correct.

**COUNCILWOMAN LITMAN** – But you're saying prior to that?

**DAVE MALEY** – Yes, prior to that, that's what the original language stated. Yes, you're correct and I apologize.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Councilman Lombardi.

**COUNCILMAN LOMBARDI** – Yes. Just to add to what I was saying then. So, basically what we've done is we have said, you can put and the committee met about this; we've listened to everybody on Council that had input to it and we've made a list of things that people are currently using downtown on the sidewalks and we've included them to the extent that we could and this ordinance is basically keeping our sidewalks safe and passable and ADA compliant. As well as maintaining a beautification standard throughout the City. So, it's not necessarily something that we're restricting people to; we're actually opening it up and allowing



people to do different things on the sidewalks. They just have to, you know; it is a sidewalk. It's not a business regulation, this is a sidewalk regulation and we have to make sure that our sidewalks are safe and passable.

**COUNCIL PRESIDENT ISTNICK** – Councilman Thieret.

**COUNCILMAN THIERET** – I agree, absolutely that it is our given responsibility to make sure that all of our systems are safe. But when you say, you have to have this color of manufactured fence and so or so such height and white lights on it only, we are going past that. We're going significantly past that and we're infringing upon the business owner's ability to personalize their storefront and I think that's definitely wrong. We should not be in that business.

**COUNCIL PRESIDENT ISTNICK** – Councilman Herncane.

**COUNCILMAN HERNCAINE** – Thank you, Madam President. I really appreciate the effort that Councilman Lombardi and Councilwoman Halter and Mr. Johnson and the Administration have put into this ordinance. I've thought long and hard about this. I agree with Mr. Thieret's assessment. I believe this in the totality of the way it's written is not business friendly and I will be voting "no" as well.

**COUNCIL PRESIDENT ISTNICK** – Anyone else? Councilwoman Halter.

**COUNCILWOMAN HALTER** – Thank you, Madam President. I'd like to make a motion to amend Ord. No. 8 – 2020 to include the amended Exhibit "A" which takes Ord. No. 8 – 2020 back to first reading.

**COUNCIL PRESIDENT ISTNICK** – First the amendment. Councilman Herncane seconded the amendment. Roll call.

9 yes to amend Ord. No. 8 – 2020 to include the amended Exhibit "A"

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 8 – 2020 has been amended to include the amended Exhibit "A". Councilwoman Halter.

**COUNCILWOMAN HALTER** – Thank you, Madam President. I'd like to waive the rules requiring three readings and bring Ord. No. 8 – 2020 forward for a vote.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilman Lombardi. Roll call for suspension.

8 yes; 1 no for suspension – Thieret voted "no"

**COUNCIL PRESIDENT ISTNICK** – And for passage.

6 yes; 3 no for passage – Gregg, Herncane and Thieret voted "no"

**COUNCIL PRESIDENT ISTNICK** – Councilwoman Litman.

**COUNCILWOMAN LITMAN** – May I make a comment regarding that ordinance?

**COUNCIL PRESIDENT ISTNICK** – I'd like to say that Mr. Lombardi I thought did a great job on crafting this and I do think that it can be very dynamic that as the businesses address certain things where it is in violation that we should be open-minded enough to go back in and be able to amend this recognizing that we do want our City to be a "business-friendly" City. But I do think we need to get something on the books that allows them some liberties versus what we have currently which is nothing can be on the sidewalks. Thank you.

**COUNCIL PRESIDENT ISTNICK** – Thank you, Councilwoman Litman. Ord. No. 8 – 2020 has passed. Ord. No. 11 – 2020.

**ORDINANCE NO. 11 – 2020**

**BY: FINANCE COMMITTEE**

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to exercise the option to renew the Engineering contract with OHM Advisors for the years 2020, 2021 and 2022, and declaring an emergency.

**COUNCIL PRESIDENT ISTNICK** – Councilman Lewis.

**COUNCILMAN LEWIS** – Yes. The Administration is reviewing this contract and has asked that we hold off on a vote right now. So, with that said, I make a motion that we table Ord. No. 11 – 2020 until the meeting on March 2, 2020.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Starrett. Roll call.

9 yes to table Ord. No. 11 – 2020 until March 2, 2020

**COUNCIL PRESIDENT ISTNICK** – Thank you, Madam Clerk. Ord. No. 11 – 2020 has been tabled until March 2, 2020.

15. **SECOND READING ORDINANCES AND RESOLUTIONS**
16. **NEW AND MISCELLANEOUS BUSINESS**
17. **REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS NOT ON THE AGENDA**
18. **ADJOURNMENT**

**COUNCILMAN LEWIS** – I make a motion to adjourn.

**COUNCIL PRESIDENT ISTNICK** – Seconded by Councilwoman Litman. Meeting adjourned.

**DIANE ROLLAND, COUNCIL CLERK**

**CLAUDETTE ISTNICK, PRESIDENT**