

June 4, 2018

Members present: Mr. Huddle, Mr. Landon, Mr. Daniels

With a quorum present, Mr. Huddle called the meeting to order at 6:30PM.

Minutes reviewed from May 22, 2018. Mr. Daniels moved to approve; Mr. Landon 2<sup>nd</sup>.  
Roll Call: Ayes: Mr. Huddle, Mr. Landon, Mr. Daniels.

**Minutes from May 22, 2018 approved.**

**New Business:**

**Item 1. RESOLUTION APPROVING AND ADOPTING THE BUDGET OF THE CITY OF MARION, OHIO FOR THE YEAR 2019, AND DECLARING AN EMERGENCY (Auditor Carr)**

Auditor Carr explained that annually we submit a tax budget to the county. They assign amounts and rates for our property taxes. A resolution to adopt rates will be brought back before council at a later date.

Auditor Carr clarified that designated dollars go to designated funds and are tracked separately, i.e. police, fire, storm and sanitary funds.

Auditor Carr and Mayor Schertzer clarified that additional liabilities created by sick leave sellback are budgeted for every single year.

Mr. Landon made motion to recommend. Mr. Daniels second. Roll Calls: Ayes: Mr. Huddle, Mr. Landon, Mr. Daniels

**LEGISLATION GOES TO COUNCIL WITH A 3-0 RECOMMENDATION**

**Other Business:**

**Item 1. ORDINANCE AUTHORIZING THE SAFETY DIRECTOR TO ENTER INTO CONTRACT WITH MATHEWS FORD MARION, INC. FOR THE LEASE/PURCHASE OF FIVE (5) MARKED POLICE VEHICLES FOR THE POLICE DEPARTMENT, AND DECLARING AN EMERGENCY.**

Safety Director Robbins explained that they received one bid from Mathews Ford. The price is a lease/purchase. Over 4 years, the city would own the vehicle for \$1. Cost amounts to \$57,555 annually. His recommendation is to move forward on this. They are already being built. He requests emergency legislation.

At Mr. Daniels' request, Mr. Robbins explained that the purchase for one vehicle is \$42,058 and includes special equipment, i.e. light bars, cages. etc. Cost is about \$11,511.12 per year per car. \$19,000 is the finance charge for all 5 vehicles over a 4-year period. That amounts to about \$4,000 per vehicle, or about 6.2%.

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Auditor Carr explained that we are at our limit county wide for debt service. Capital money is about \$130,000 and there are a lot of needs for that money. In trying to find a way to replace 5 vehicles, there is no good funding mechanism for finding that much money up front.

Mr. Landon made motion to recommend. Mr. Daniels second. Roll Calls: Ayes: Mr. Huddle, Mr. Landon, Mr. Daniels

LEGISLATION GOES TO COUNCIL WITH A 3-0 RECOMMENDATION

**Item 2. SMITHBERGER ORDINANCE**

Mr. Daniels requested a discussion of ORD 2018-44 passed at Council Meeting on 05/14/2018.

Law Director Russell gave an overview. On 05/14, Council met and passed an ordinance that would appropriate \$2,500 to fire department from the general fund so that they could sign contract with Smithberger, an engineer, to design a temporary floor fix to assure the safety and security of the floor. On 04/25, Mr. Daniels had presented a 3-page proposal to council members and administrators. On 04/26, Russell responded and suggested one change that would be consistent with every other contract ever made by the city when contracting for services. The contract as submitted limited liability in any event to any extent to \$2,500 (amount of contract). When we enter into contracts with engineer and architects we require them to conduct professional duties in ordinary course of professionalism in their industry. If they do not and liability is incurred, they have some responsibility if property damage or personal injury occurs. Council had his opinion that the contract should be modified to conform to standard language and there has been no discussion. The contract has now been received by the safety director. He has not signed because there were no changes based on Law Director's opinion. The Council needs to decide what it wants to do. Council could direct Safety Director to sign as per original language. It will take additional action to direct the Safety Director to enter into an agreement that does not conform with every other contract entered into by the city.

Law Director Russell explained that there is a statute that states that all contracts shall be referred to the city attorney to provide advice. Council can choose to act on this advice or ignore it. There is no legislation that mandates certain language.

Law Director Russell continued. Council was given the proposal but Council did not vote on proposal. They were recommendation from Law Director. They voted to appropriate. There was no ordinance to direct Safety Director to enter into contract or anything that would indicate that the council approved language. It is not necessary. We try to facilitate. He asked if Mr. Daniels had gone back to Mr. Smithberger and asked if he is willing to change to standard language.

Mr. Daniels stated he had not asked but that Mr. Smithberger said emphatically he would not assume liability for the entire floor. Even with a favorable outcome, you could easily pay \$2,500 to have an attorney wade through questions about how a floor may fail in the future. The city paid \$6500 for Hazen and Sawyer, with no responsibility or

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liability, for just a written opinion of what they thought was needed on the building. Mr. Daniels' (retired) engineer was willing to give a solution and blue prints that could be given to the state and the state's plans examiner would review and give a final OK. We cannot ask him to guarantee an entire floor when he does not select contractor who puts it together.

Law Director Russell stated that we are not asking for a guarantee from the engineer. He is asking for assurances that Smithberger uses the reasonable ordinary due care associated with his industry. No guarantee on future failure on floor. Perhaps Smithberger would not object to language if we went back to him.

Mr. Daniels shared his perception as a public contractor. When you throw huge liability, he does not care what the administration is saying applies and what does not. You do not know who is going to be running the show. You price accordingly. You do not charge \$2,500 to be on the hook for a fire department that future councils might pin you with. This floor was looked at in 2004 by an engineer and now we are having problems with it. We not going back to that original contractor fourteen years later. We do not know if your fix quite worked, 14 years late. In 1998, Merchant-Spencer-Homer project involved an engineer as well. Put galvanized corrugated storm sewer which we replaced. Law Director Russell stated that we had litigation involved regarding damages incurred in regards to this project.

Law Director Russell stated to Mr. Daniels that he would have no problem signing a contract that says that you will utilize normal prudent ordinary customary practices in the industry. Mr. Daniels agreed because he is in control of the work. This engineer does not have that control. Law Director Russell stated that the engineer is going to draw up designs. If the work is conducted to his design and submitted and approved designs, that is the limit to his liability. If someone does not follow it appropriately, that is not his issue. Mr. Daniels said why would you enter into this?

Law Director Russell stated that Mr. Daniels had indicated that you had not asked. Mr. Daniels said yes he had asked and Smithberger said no.

Mr. Daniels said that this sets a precedence as well. The City is given an opportunity to fix the floor. As of two week ago, the floor has additional damage. We did not hear about it for 6 months, if not longer. It gets thrown in our lap as council. We need to fix it now. More damage is being created. We have lost 6 months and this has been held up an additional 3 weeks. This sets a precedence. Council voted on ordinance to appropriate money. They were given a contract to read. We can't guarantee that everyone read, but hope that they did and know what they are voting on. We cannot go back and question the integrity of council every time an issue has been passed.

Mr. Daniels continued. The proper procedure here is if a council personal has second thoughts then they need to request a repeal of the ordinance. We should not put something in limbo for three weeks that has already passed. We move forward until someone says no and they make a motion.

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Law Director Russell noted that there are 6 council people here and we need to hear from them that they believe administration should move forward. You assumed people read proposal and read email shared by clerk. If all council people in audience say yes, we understood there was some issue with the liability language but we were OK with it and believe we should move forward without any additional delay.

Mr. Huddle asked if we can really move forward. Has person moved on to another project?

Mr. Daniels stated that he asked Smithberger today if he would take on this issue of liability with the unknowns of this building. You are asking someone to take on too much risk for too little reward. They stay away from that. There is plenty of work out there otherwise. Because Smithberger hasn't heard from city for 3 weeks, he has taken on other obligations. We are now out to middle of July to present these plans. Should council decide to rescind legislation, we will not have an engineer and a floor that is worse as of two weeks ago. We do not have the luxury of time. We need to get it fixed.

Law Director Russell stated that if other council members in audience and at table have no concerns, that would be an indication that safety director can sign this tomorrow.

Mr. Huddle stated that he was under assumption that they were moving forward.

Mayor Schertzer clarified that on 05/14 appropriation ordinance was passed. This only appropriates money that we can spend to a contractor. He has not seen the contract of that yet. He did not see appropriation ordinance (because there was none written on 05/14) until 05/23 when he signed it – over a week later it showed up in the Mayor's box because it was not written.

He continued. The normal course of procedure, contract goes to Law Director for review. Every time. He gives it a once over. This time, there was something that raised a red flag for Law Director. If council wants us to proceed even with that red flag, we will sign contract if that is what council wants. If Law Director says there needs to be legislative action from council to direct us to sign it, then do that. Until the Law Director says OK, we will be hesitant. It does not mean that we will not sign it. It has nothing to do with the person whose name that we are bringing up. It has everything to do with the contract and advice of the Law Director.

Mr. Daniels stated that long before it was voted on before council, the proposal was passed on to everyone. Law director said that clause he did not agree with. At the time we appropriated that money, was when this should have been brought up, not three weeks later. We are running out of time. You do not understand the severity of this floor situation. Six months went by, now an additional six weeks have gone by and we are going to drag another six weeks out -- before too long it will be too expensive to fix at all.

Mayor Schertzer stated that he just gave the timeline as it was known to him, as he understands it. It has not been 6 months before you were told about it. When the Chief completed the preliminary report of all the issues at the Fire Department, it was

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presented to you at next council meeting. It has not been 6 months since admin has known about the crack.

Mr. Daniels stated that the chief states that it was the floor. It was brought to his attention in September or October. I would expect that he would – that is what he did – to tell administration. That would be his office.

Mayor Schertzer stated that it was his recollection that it was January or February when he was aware of it. He cannot pinpoint on exact date. After we asked the chief to do a more comprehensive review of all of the issues with the fire house, we brought everything to council in a very preliminary report.

Mr. Daniels said if you are not a builder you would not understand the severity of the floor repair. We do not have time to fix the floor on our schedule, but other things can wait. Continually sees a delay for some reason. There is something wrong with the system. We are not moving forward on anything.

Mayor Schertzer stated that we are following normal course of procedure for any contract. He apologized that it is taking too long. If there are modifications that need to take place legislatively to make expedite this process, we are in favor of working with Legislation and Codes to expedite this process.

Mr. Daniels stated whatever gets this done and signed the quickest puts the city in a better position. Right now, the liability lies totally with city. If the floor structurally gives way that we cannot reinforce and we have to rebuild it. Talk to Hazen and Sawyer, because it is now a \$250,000-\$3000,000 fix. It is something astronomical. We do not have that kind of money to pitch away. We cannot seem to make a decision because there are too many people making it and they cannot agree. For an analysis you paid \$6,500. This \$2,500 proposal is a gift, almost pro bono. He is not going to tie himself up because of future liability. If you eliminate this as an option, Mr. Daniels does not have any other option. We will have to go back to Hazen and Sawyer. Maybe someone else has a good suggestion. We are getting tangled up on liability and the floor is collapsing in front of us.

Law Director Russell stated that we tend to be very efficient. We responded to proposal within a day. We are here to facilitate moving forward without delay. There are 6 people from council here participating in the discussion. That is a majority of council. If each one of you are aware that tomorrow the Safety Director is going to sign, please stand up and say if you have concerns. It does not take an ordinance. We have a majority of council is here.

Mrs. Blevins stated that she is tired of the insinuation that the majority of people in this room do not understand what needs to be done. Law Director Russell is an attorney. If he says it needs to be done, it needs to be done. We need to go with the best advice available. We have two opinions to judge upon. She stated that she did not get anything from Smithberger or Mr. Daniels or anyone else. She and Mrs. Gustin did not find out about the fire station issue until the first council meeting that it was discussed.

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Everyone else knew, but no one told them. She said that Mr. Daniels could not say that everyone knows about it because she and Mrs. Gustin did not.

Mr. Daniels asked Mrs. Blevins to offer any solution that she might have. No one else is offering a solution. There are two options. One is a \$250,000 solution.

Mr. Huddle stated that he was present that day. He just happened to be there that day. Mr. Smithberger was there, our engineer was there. He had gone over for education mostly. Chief was there. Mr. Daniels was there. We went through entire building and the emphasis was put on floor primarily. It has been a big issue because it needs to get done sometime soon if we are going to go that avenue. That is a problem.

Mrs. Blevins stated that she asked Chief Deem why he had not told her or Mrs. Gustin. He said that he had so many other people to tell that he did not have time

Mr. Schaber stated that he found out because he got a call from a property owner that their property was up for sale and wanting to know if the city wanted to buy it. He referenced the line about the liability and asked if that means that the liability is specifically towards engineer on the drawing and his idea for a remedy for the problem.

Law Director Russell indicated that it is even less significant. The contract (as written) says liability is limited to \$2,500. If recommended design doesn't meet ordinary reasonable standards and practices of industry, if he makes a terrible design decision in his drawings then he might have liability, limited to \$2,500. He will create drawings and those drawings will be reviewed in Columbus and they will see if there is any negligent design flaw. If council members understand that liability is only limited to \$2,500 and he would only have liability if design is flawed and contrary to industry practices. Likelihood of that is no. If council people understand and are ok with it, that is ok. Ask the administration to go forward.

Mr. Schaber asked Mr. Daniels to clarify if it is a fact that he cannot do anything until July.

Mr. Daniels stated that he thought a \$30,000 fix was better than what was on the table. He wanted to save tax payers a lot of money. Now he is getting attacked. He does not have any more to say about it.

Mr. Schaber stated that if Smithberger cannot do anything until July and we sign it tonight, will we open ourselves up to this long bout of liability. Rather than rush into it, could the Law Director be the point person talk to him. Why is Mr. Daniels doing it?

Law Director Russell stated that Mr. Daniels was clear. He would not ask and Smithberger was not willing. Why would he be willing to take the liability attached to it. We want to facilitate and move this forward. If Smithberger cannot do it yet this week, if council members have questions, they can contact him and we can do it Monday at Council meeting. They could pass an ordinance directing safety director to sign. This is government working. Mr. Daniels wasn't wrong. He put forth a proposal that was the

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least costly proposal that offered an opportunity that saved the tax payers money, at least for the near future.

With no further business to come before the Finance Committee, Mr. Huddle adjourned the meeting at 7:13 PM.

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Chairman Huddle

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Clerk of Council