

**COUNCIL MEETING MINUTES  
CITY OF UNIVERSITY HEIGHTS, OHIO  
TUESDAY, FEBRUARY 20, 2024**

Vice Mayor Michele Weiss called the meeting to order at 7:03 p.m.

Roll Call:

Present: Mr. Christopher Cooney  
Mr. John Rach  
Mrs. Sheri Sax  
Mrs. Michele Weiss  
Ms. Winifred Weizer

Absent: Mr. Brian King  
Ms. Threse Marshall

Also Present: Mayor Michael Brennan  
Clerk of Council Kelly Thomas  
Law Director Luke McConville  
Fire Chief Robert Perko  
Economic Development Director Susan Drucker  
Police Chief Dustin Rogers  
Service Director Allen Pennington

**MOTION BY MS. WEIZER, SECONDED BY MR. COONEY to excuse the absence of Council Members Brian King and Threse Marshall. On roll call, all voted “aye.”**

**Approval of Council Minutes:**

There were no corrections to the February 6, 2024.

**MOTION BY MRS. WEISS, SECOND BY MRS. SAX, to approve the Council minutes from February 6, 2024. On roll call, all voted “aye.”**

**Additional and Removals from the Agenda; Referrals to Committee:**

Ms. Weizer informed Vice Mayor Weiss that at the Building and Housing Committee meeting which was held just prior to this City Council meeting and discussed an issue with Ordinance 2024-02. There was a typo where it showed .05 and should have been .02, that caused some issues with the total dollar cost for permit fees and requires a change in the commercial building permit base and valuation fee. Council will need to add an item to tonight’s agenda that will cover anything building permit projects coming in and will also allow correction be made to what may have been built previously when the Ordinance took effect.

Mr. McConville said that it was his understanding that there is what amounts to an error or typo with respect to the rate that is established by the Ordinance for the issuance of construction permits. In fact, the rate should have been lower than what is currently set forth in the Ordinance. The error is typographical, not substantive. And what has been done in the past in this municipality and others when that happens is a subsequent ordinance is passed to correct what is referred to as a scrivener's error and correct the typographical error on a retroactive basis to the date at which the Ordinance was initially adopted so that for all time periods that the Ordinance is in effect the correct rate is charged. This is referred to as an Ordinance being “Nunc pro tunc” which means now for then. Council would pass this at their next meeting but it would be retroactive to the date of the initial passage. Mr. McConville suggested that Council add to the agenda a motion to direct the Law Director to draft an Ordinance correcting a scrivener’s error with respect to Ordinance 2024-02.

**MOTION BY MS. WEIZER, SECONDED BY MRS. SAX to add to the agenda a directive to the Law Director to draft an Ordinance correcting a scrivener’s error with respect to Ordinance 2024-02. On roll call, all voted “aye.”**

Mrs. Weiss stated that that will be agenda item “E” and Motion for Executive Session will become agenda item “F”

**MOTION BY MRS. WEISS, SECONDED BY MR. RACH to add to the Council Agenda a Motion to authorize the Expenditure of \$1,050,000 for Purposes of Acquisition of the Yeshiva Adath B’nai Israel “YABI” Real Estate. On roll call, all voted “aye.**

### Comments from Audience

There were no audience comments.

### Reports and Communications from the Mayor, and the taking of action thereon:

#### Mayor’s Report

The eclipse is coming. University Heights will be in the middle of the Path of Totality – and it is a reason to celebrate.

Like many cities in Northeast Ohio, University Heights will host a party for the Total Eclipse. Our event will be on Monday, April 8 from 1:30 to 4:30 p.m. at Walter Stinson Community Park. We’re partnering with our friends at the Heights Libraries and Destination Cleveland. Live entertainment will be provided by WJCU DJ Zachary Sinutko, and Odd Dog Coffee will be at The Walt to sell food and drinks. There will be science activities for the kids, thanks to the Heights Libraries.

And most importantly, we will provide protective solar eclipse glasses for all, so that residents may enjoy the eclipse safely. The glasses we purchased for this event meet international safety standards. Whereas ordinary sun glasses cannot be used to look directly at the sun. We want to protect from injury anyone who would seek to view the eclipse as it happens. Only upon reaching totality, the point where the moon completely obscures the sun, can one safely view the eclipse with the naked eye.

The eclipse event is free and open to all. We encourage residents to walk to the event, if possible. We expect unprecedented traffic in the region around the eclipse.

Communications and Civic Engagement Director Mike Cook is unable to attend tonight, but he asked me to let you all know that the new Mosaic magazine is out. Advance copies are available at City Hall, and at businesses across the city, as well as the library. Residents should be receiving their copy in the mail by the end of the week. The eclipse is the cover story, among several stories featured.

I have a recycling update. Today I met with other members of the East Side Consortium at the Solid Waste District’s offices. We went over draft “invitation to bid” documents for pricing for both the landfilling of solid waste and the processing of recyclables. Both contracts are up this year. Based upon the report from SCS Engineering and subsequent discussion, it will be my recommendation to continue participating in the East Side Consortium, with a view towards preparing ourselves to accept a bid on the processing of loose recyclables. Allen Pennington and I will be bringing resolutions to council to the effect of continuing participation with the East Side Consortium. As a reminder, the other consortium cities are:

City of Beachwood, City of Cleveland Heights, Village of Highland Hills, City of Independence, City of Lyndhurst, Village of Moreland Hills, City of Pepper Pike, City of Shaker Heights, City of Solon, City of University Heights, Village of Woodmere.

The City of University Heights is currently paying \$105.92/ton to process recyclables and \$44.21/ton to landfill solid waste. Cleveland Heights modernized its systems, increased its recycling by 70%, and under a “blended market rate concept” is currently paying just \$28.42/ton for its recyclables, which saves money compared to landfilling.

I have a University Square update. Today, the Court granted an extension on the Sale Hearing on University Square. It was set for February 27, 2024. The new hearing date is March 12, 2024. It is anticipated the additional time will be used to finalize terms among the stakeholders, (which include Target, Macy’s, the current ownership, and the City,) with the sole bidder for the University Square property, KL Holdings. After which time, the sale may close and the redevelopment of University Square may proceed.

Thank you, this concludes my report.

**Reports and Communications from City Council, and the taking of action thereon**

There were no reports from City Council.

**Reports and communications from the Directors of the Department of Finance, the Department of Law, the Department of Public Safety, the Department of Public Service, and other department heads as applicable, and the taking of action thereon**

**Finance Director Dennis Kennedy** provided a brief update on the revenues and expenses for January 2024 reported that the Finance Department was closing out the month of January so he would provide Council with a financial report once that it finished. There will be an upcoming CIC meeting to approve the auditor for the CIC.

**Law Director Luke McConville** stated that he would be requesting an Executive Session to provide Council with updates on the Alexander Shul litigation, the YABI litigation and the University Square litigation cases. Secondly, Council members have before them a letter of engagement from Nicola Gudbranson & Cooper, LLC. Mr. McConville noted that he was precluded from commenting on the Ordinance during its substantive discussion nor could he speak to it. Mr. McConville stated that he did however have a preference that whoever his successor as new Law Director to be able to comment on the scope of the engagement prior to the adoption of the Ordinance because he wanted that relationship with the new Law Director to be collaborative from the start and put their comments and opinion on it. Mr. McConville stated that his preference would be for this reading to serve as first reading and then adopt it at some point in end of March or beginning of April.

There were no other director reports.

**Reading and Disposition of Ordinances, Resolutions, Motions and Consideration of Agenda Items:**

**A. Ordinance 2024-06 Authorizing the Mayor to Enter into an Agreement with Wallace Pancher Group for the Provision of Engineering Services as City engineer, and Declaring an Emergency**

Mayor Brennan stated that as indicated in his memo, initially when Osborne responded to the RFQ they provided a statement of qualifications together with a proposed scope and proposed retainer, which was a reduced scope from the scope that the city had placed in the RFQ. Mayor Brennan continued to say that after meeting with Osborne to discuss their scope and possibility of bringing them on as engineer. And although it felt that the comparison between Osborne and Wallace Pancher was apples-to-apples the Mayor wanted to afford Wallace Pancher an opportunity to re-quote based upon the identical scope as Osborne had envisioned it and they (Wallace Pancher) came back with a much lower number than they had initially proposed when they had originally bid and although it was still more than Osborne's, the Mayor thought that there were a couple of key factors. Wallace Pancher is currently representing four municipalities in the county and according to representative of those cities they are performing well. Osborne is a very reputable firm with a long history but is just trying to get off the ground with its municipal engineering practice. In terms of the actual quotes, although the retainer rates are still higher for Wallace Pancher than Osborne's, Wallace Pancher is willing to agree in the long term to fixed amounts for increases over time tied to the city's collective bargaining agreements like they have done in other cities like Fairview Park, Rocky River, and Middlebrook Heights. Mayor Brennan said that he specifically asked Osborne if they would agree to a fixed rate of increase and they declined to do that because they wanted to be able to have the freedom to quote all new rates every September throughout the various options. Both Osborne and Wallace Pancher are excellent firms but those were two of the deciding factors. Mayor Brennan said he was confident that either firm would serve the city well, but in a close call, he would nevertheless recommend that bringing on Wallace-Pancher.

Ms. Weiser noted that in the Ordinance part of the section that covers the monthly retainer, item E and item I were shown as reserved and inquired what reserved meant.

Mayor Brennan replied that items E and I were pulled out of the retainer items and place in the non-retainer items but in order to keep the Ordinance and contract in line with each other. Items E and I can be used at a later time for future items if needed.

Mr. McConville commented that the use of the word reserved was a common method of contract drafting where rather than re-lettering or re-numbering provisions where something has been extracted, you simply put as a placeholder the word reserved, which simply means you're to move to the next letter or number.

Ms. Weiser asked if those reserved items were used would that have to come back to Council for approval. And secondly, she noticed in this contract as well as in other contracts like SAFEbuilt there is nothing about failure to do what is in the contract. There are no penalties, there is nothing about if something is not done. How would that be addressed. Ms. Weiser said that she would think that in protecting the city, something like that would be wanted.

Mr. McConville replied yes. Mr. McConville noted a couple things in terms protection in the event of failure to perform the duties that are listed in the contract would be a breach of contract and there is a common law claim for breach of contract. But more significant than that is the termination provision. The termination provision is a 90-day termination. The city can terminate the engineer middle of the year if it is not getting satisfactory performance.

Mayor Brennan added that this is a professional services contract. And if a point is reached with any provider of professional services, this one or any other where they are not doing what they should be doing and the city is not able to rectify that situation he would not want them to continue.

Mr. McConville also noted that if the engineer does something or omits to do something that results in damage to the city, the city has claims at common law, breach of contract claims, and malpractice claims. This is a licensed individual who is obligated to meet professional standards in terms of the job they do for the city. If they fail to do that and their failure to do that creates some kind of economic harm for the city, there is recourse to the courts and claims.

Mrs. Weiss commented to the Mayor that this could have been resolved six weeks ago and that she wanted to make sure that the residents knew that. Wallace Pancher could have come back and that she was not sure what happened. Noting that Wallace Pancher obviously came down on their price, Mrs. Weiss said that she did not think any of Council realized that they were not in the scope of the RFP or RFQ and that definitely bothered her.

**MOTION BY MRS. WEISS, SECONDED BY MR. COONEY to 2024-06 Authorizing the Mayor to Enter into an Agreement with Wallace Pancher Group for the Provision of Engineering Services as City engineer, and Declaring an Emergency. On roll call, all voted "aye."**

**B. Ordinance 2024-05 Authorizing the Mayor to Enter into an Engagement Letter Agreement with Nicola, Gudbranson & Cooper, LLC for Ongoing Legal Services (on emergency)**

Mrs. Weiss stated that this was discussed in executive session and that she was bringing it out into the sunshine and that she had asked Mr. McConville to create an engagement letter for his firm in light of his resignation because there are some very specific legal or actual very specific litigations that are occurring and that he has historical knowledge and a deep understanding and where the new Law Director would not. Council desires to retain him for those ongoing issues. In consideration of Mr. McConville's discussion and Law Director report, this Ordinance will be placed on first reading and once the new Law Director been hired a discussion regarding this Ordinance between Council and the two of them will be held in open session.

Ordinance 2024-05 was placed on first reading.

**C. Motion to Authorize and Accept the Bid Proposal from Ease@Work for Fire Department Wellness Education Curriculum and various other health services ending December 31, 2024 in an amount not to exceed \$99,750.00 and funded by the remaining ARPA Grant**

Fire Chief Perko reported that only one bid was received for this proposal. Chief Perko noted that Ease at Work was also the department's employee assistant plan provider for the last few years and that they have a good rapport with them. Ease at Work are used to working with public safety and providing the scope of services needed to meet the grant requirements.

Ms. Weizer asked Chief Perko if you had any idea why only one quote was received, is this matched in other departments or was this something that a lot of departments currently did not have?

Chief Perko replied that a lot of departments don't have it, but that they have been following the International Association of Firefighters International Association of Fire Chiefs Wellness Fitness Initiative which outlined five main categories. One of them being medical examinations which the department in the process of conducting right now. There have also been ongoing fitness assessments in collaboration with John Carroll for about the last six years.

**MOTION BY MRS. SAX, SECONDED BY MS. WEIZER to Authorize and Accept the Bid Proposal from Ease@Work for Fire Department Wellness Education Curriculum and various other health services ending December 31, 2024 in an amount not to exceed \$99,750.00 and funded by the remaining ARPA Grant. On roll call, all voted "aye."**

**D. Motion to Approve Contract for Municipal Engineering Services**

Mr. McConville noted that this item was placed on the agenda as a place holder and was not needed due to the approval of added agenda item A.

**MOTION BY MS. WEIZER, SECONDED BY MRS. WEISS to remove agenda item "D" Motion to Approve Contract for Municipal Engineering Services. On roll call, all voted "aye."**

**E. Motion to direct the Law Director to draft an Ordinance correcting a scrivener's error with respect to Ordinance 2024-02**

Mr. McConville stated that he would have the legislation on the next meeting agenda on emergency. It will be drafted so that it is retroactive to the date of initial enactment.

**MOTION BY MS. WEIZER, SECONDED BY MRS. SAX to Direct the Law Director to draft an Ordinance to correct a scrivener's error in Ordinance 2024-02. On roll call, all voted "aye."**

**F. Motion to Enter Executive Session for the purpose of Discussing Legal Proceedings, Personnel and Real Estate Matters**

Mrs. Weiss stated the need to hold executive session for the purpose of legal and real estate matters.

**MOTION BY MR. COONEY, SECONDED BY MR. RACH to enter Executive Session to discuss legal proceedings and real estate matters regarding Yeshiva Adath B'nai (YABI), Alexander Shul and University Square. On roll call, all voted "aye."**

**Reports of standing committees and the taking of action thereon.**

**Standing Council Committees:**

**Building/Housing - Chairperson Winifred Weizer**

During the committee meeting discussion was had regarding permit fee changes, the SAFEbuilt contract, flow charts for to make the process of housing and building as clear as possible for homeowners and also for contractors.

A doddle poll has gone out for a meeting on February 20<sup>th</sup> at 6pm. There are a number of items for the agenda: flow chart from the Housing and Community Development, discussion regarding SAFEbuilt contract, questions regarding Point of Sale, sidewalks, and rentals. Continued discussion was had for the preparation of the new letter for exterior inspections and also addressed realtor concerns on point of sale inspections. The committee also briefly talked about some rental issues.

**Finance Committee – Chairperson Mrs. Weiss**

There will be a Joint Finance and Finance Advisory Committee meeting next week to review the draft budget.

**Safety Committee - Chairperson Ms. Marshall**

In Ms. Marshall absence Mrs. Weiss noted that there was still parking issues on South Belvoir and Washington and that she will be following up with Police Chief Rogers.

**Service and Utilities – Chairperson Mrs. Sax**

The Committee will meet on March 6<sup>th</sup> at 6pm.

**Committee of the Whole – Vice Mayor Weiss**

The Committee will meet next week to interview potential Law directors. Also, there is a poll out for a Council Retreat that will be within the next month or so.

**Reports of special committees, and the taking of action thereon.**

No reports

Council entered Executive Session at 7:56 p.m.

**MOTION BY MRS. SAX, SECONDED BY MR. RACH to come out of Executive Session. On roll call, all voted “aye”.**

Mr. McConville asked if there was a motion to add agenda item “G” to Authorize the Expenditure of \$1,050,000 for Purposes of Acquisition of the YABI Real Estate.

**MOTION BY MRS. WEISS, SECONDED BY MR. RACH to add to the agenda, Agenda Item “G” Authorizing the Expenditure of \$1,050,000 for Purposes of Acquisition of the YABI Real Estate. On roll call, all voted “aye”.**

**MOTION BY MRS. WEISS, SECONDED BY MS. WEIZER Authorizing the Expenditure of \$1,050,000 for Purposes of Acquisition of the YABI Real Estate.**

Mr. McConville noted that the parties to the litigation would proceed to negotiate a purchase agreement that would contain details about the acquisition of title to the property along with payment for same and dismissal of the litigation. The purchase agreement will be placed in front of Council by Ordinance for approval.

**On roll call, all voted “aye”.**

**MOTION BY MR. RACH, SECOND BY MR. COONEY, to adjourn the meeting. On roll call, all voted “aye”.**

There being no further business to consider, the meeting adjourned at 8:17pm.

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Michele Weiss, Vice Mayor

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Kelly M. Thomas, Clerk of Council