

**STATE OF WEST VIRGINIA, COUNTY OF MARSHALL, CITY OF MOUNDSVILLE,
NOVEMBER 5, 2008**

The Council of the City of Moundsville met in Regular Session in the Council Chambers on November 5, 2008 at 7:00 p.m.

Meeting was called to order by Mayor Wayne Lemasters, who asked for a moment of silence for Laverne "Sonny" Yoders, a former Councilman who recently passed away.

Invocation by Councilperson K. Mark Simms.

Acting City Clerk Karen L. Ankrom called the roll and the following councilpersons were in attendance: Haynes, James, Simms, Wallace, Wood and Mayor Lemasters. Absent: Cunningham. Also present: City Manager Hendershot, Police Chief Kudlak, Fire Chief Clarke, Street Foreman Stocklask, Building Inspector Wise, CPA Kathryn Goddard, and Attorney Thomas White. Absent: City Clerk Hewitt and Street Commissioner Richmond.

MINUTES:

Regular Council Meeting of October 21, 2008.

Councilperson Haynes made a motion to accept and approve the minutes of the regular council meeting of October 21, 2008, seconded by Councilperson James. Motion carried unanimously.

PUBLIC HEARING:

A Public Hearing Concerning a Brownfields Grant for the City of Moundsville

City Manager Hendershot explained that the Department of Environmental Protection Grant is for \$180,00.00, with a \$20,000.00 match, and funds will cover costs to encapsulate contaminated areas. Current work is at ground level, with cross-contaminated debris being removed to obtain DEP approval, which is required to obtain the grant monies.

*David White of 406 Clinton Avenue questioned whether this was the same grant obtained previously. Manager Hendershot explained that, although the grant application was approved last year, the deadline for submission was not met. Manager Hendershot mentioned that some smaller grants have been received but not from the DEP; and approval for this particular grant may not be received until mid-2009.

Manager Hendershot noted that about \$6,000.00 in cash has been accumulated toward the \$20,000.00 match, as well as some in-kind contributions that can be counted.

GENERAL PUBLIC HEARING:

* Betty Burkett, 1500 6th Street, voiced her support for the regulated tethering ordinance. She presented statistics and information from the Humane Society and Center of Disease Control in regard to the continuous tethering of dogs and how this affects their health and behavior. Mrs. Burkett feels that, although the ordinance is not perfect, it is a “good, responsible” start.

* Sandy Gower, 332 Poplar Avenue, has resided in Moundsville for over 35 years, was a dog trainer for 17 years, worked at the Marshall County Animal Shelter, and is a member of the Animal Task Force. Ms Gower noted that, as a “pack animal,” when a canine is adopted into a family, said family becomes the dog’s pack, and lack of contact with and attention from people is detrimental to the dog’s health and socialization. Ms Gower supports the tethering ordinance.

* Kim Brooks, 208 11th Street, believes that the pet restraint ordinance is too restrictive. Ms Brooks submitted a Freedom of Information Act letter to Police Chief Kudlak for information on complaints filed and dog bite investigations. Ms Brooks contacted the Health Department and Animal Control, with no response from either department; she also called Animal Shelter Director Cindy Brautigan and veterinarian Debbie Shondrick, who both agree that the ordinance is too restrictive and needs amended. Ms Brooks noted how the ordinance affects residents around schools; the K9 Unit, should they need to do an investigation at the Junior High; and conflicts in language, as compared with ordinances from other cities. Ms Brooks feels that the ordinance infringes too much on the rights of responsible dog owners.

* Linda Sills, 112 Ash Avenue, related incidents with neighbor dogs that were seriously neglected.

* Jackie Fedorka, 1223 2nd Street, believes that the tethering is a “well-defined” ordinance.

* Barb Scanlon, representing the Marshall County Animal Shelter, expressed pride that the City is moving forward with the tethering ordinance. Ms Scanlon is not satisfied with the vagueness of the State Code and feels that the City’s ordinance “gives teeth” to the law and will make it easier for officers to better address future complaints.

* Dr. Jody Oelschlager, practicing at 2203 1st Street, agreed with discussion on how dog behavior is related to their being chained up without human contact. Dr. Oelschlager related some of the cases that she has addressed with dogs that were tethered without adequate care; and she also believes that the tethering ordinance will reduce the parasite load in the City’s soil. Dr. Oelschlager pointed out that, contrary to popular belief, tethering an animal to a stationary object is not exercise.

*Darla Beaver, 209 Pine Avenue, related two experiences that she had with neglected dogs and how she personally tried to help.

*Gene Saunders, 109 Harmony Drive, wanted to emphasize that this ordinance is meant to deal with people who seriously mistreat their dogs. They are the ones who will need to be held accountable.

* George Winter, 100 Leatherwood Drive, explained that he has an underground fence because he has an outside dog for security and protection; but he also provides adequate shelter, food and water for his animal. Mr. Winter asked officers to use common sense and consideration in applying the law. Councilperson Simms assured Mr. Winter that he would not be “targeted,” and police officers would investigate legitimate complaints. Mr. Winter also asked about private property exclusions in the ATV ordinance. Manager Hendershot confirmed that there is an exclusion, as long as there is not a nuisance issue.

* David White, 406 Clinton Avenue, also has an outside dog for security and protection of his property. Mr. White asked if cats were also included; Attorney White confirmed that cats are included in the tethering ordinance.

* Ken Joseph, representing Tri State Ambulance, introduced himself as the Chief Paramedic, and questioned Council whether there were any complaints or issues that he could address at this time. Mr. Joseph stated that he has made some dispatch changes since taking over, and he explained how ambulances are rotated in and out of cities. Mr. Joseph expressed a desire to purchase property within the City, looking particularly for areas to garage the vehicles; however, he is hesitant to move forward if the relationship with the City is uncertain.

OLD BUSINESS:

Discussion and Approval of an Ordinance Pertaining to Animal Restraint and Tethering in the City of Moundsville. (Second Reading)

Attorney White read the following ordinance by title only to be passed by council on second reading:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MOUNDSVILLE, WEST VIRGINIA, AMENDING AND REENACTING SECTION 505.03 OF THE CITY CODE OF THE CITY OF MOUNDSVILLE RELATING TO HUMANE TREATMENT OF ANIMALS WITH RESPECT TO RESTRAINT AND TETHERING OF DOGS, AND PROVIDING FOOD AND SHELTER FOR DOGS IN THE CITY OF MOUNDSVILLE. (SECOND READING)

Councilperson Wood made a motion to approve the animal tethering ordinance for discussion, seconded by Councilperson Simms.

Councilperson Wood thanked each of the speakers who addressed this ordinance, assured them that their comments were not taken lightly, and confirmed the City’s commitment to taking care of irresponsible pet owners.

Mayor Lemasters called for a roll call vote. Acting City Clerk announced the following tally: 5 yeas, 1 nay. James voting nay. Motion passed.

Discussion and Approval of an Ordinance Concerning Motorized Recreational Apparatus in the City of Moundsville. (Second Reading)

Attorney White read the following ordinance by title only to be passed by council on second reading:

AN ORDINANCE OF THE CITY OF MOUNDSVILLE TO AMEND AND REENACT ARTICLE 355 OF THE MOUNDSVILLE CODE TO PROVIDE FOR PROHIBITION AGAINST THE OPERATION OF CERTAIN MOTORIZED RECREATIONAL APPARATUS WITHIN THE CORPORATE LIMITS OF THE CITY OF MOUNDSVILLE UPON ANY PUBLIC STREET, ALLEY, OR PROPERTY; TO MAKE THE OPERATION OF SUCH APPARATUS A CRIMINAL OFFENSE; TO PROVIDE PENALTIES THEREFORE; AND TO PROVIDE EXCEPTIONS. (SECOND READING)

Councilperson Wood made a motion to accept the ATV ordinance, seconded by Councilperson Wallace.

Councilperson Haynes asked about wheelchair exclusions; they are included in exceptions, as are private property owners.

Mayor Lemasters called for a roll call vote. Acting City Clerk announced the following tally: 3 yeas, 3 nays. Lemasters, Wallace, and Wood voting yea; Haynes, James, and Simms voting nay. Motion failed on tie vote.

NEW BUSINESS:

Discussion and Approval of a Charter Change Pertaining to Council Members Absence from Meetings. (First Reading)

Attorney White read the following ordinance by title only to be passed by council on first reading:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MOUNDSVILLE, WEST VIRGINIA, AMENDING AND REENACTING ARTICLE II, SECTION 5 OF THE CHARTER OF THE SAID CITY OF MOUNDSVILLE PROVIDING FOR ATTENDANCE REQUIREMENTS FOR MEMBERS OF CITY COUNCIL. (FIRST READING)

Councilperson Simms made a motion to accept the ordinance, seconded by Councilperson Wood.

Councilperson Simms questioned why the ordinance allowed for 60 days to act upon three consecutive absences; Attorney White explained that it was included to allow Council to consider the reason for the absences. Members discussed the fact that three absences would consist of a month and a half, which is more than adequate time for the Councilperson, or a family member, to explain

the lack of meeting attendance. Manager Hendershot noted that Council will still also have to vote to remove the member.

Councilperson Simms made a motion to amend the ordinance to read thirty (30) days instead of sixty (60) days in the instance of three consecutive absences and 12-month period, seconded by Councilperson Wallace. Motion passed.

Councilperson Wood made a motion to accept the ordinance as amended, seconded by Councilperson Simms.

Mayor Lemasters called for a roll call vote. Acting City Clerk announced the following tally: 6 yeas. Motion passed.

Discussion and Approval of a Resolution Authorizing the Filing of a Grant Application with the United States Environmental Protection Agency in the Total Amount of \$200,000 for Clean Up and Redevelopment of Brownfields.

Councilperson Simms made a motion to approve the resolution, seconded by Councilperson Haynes.

Mayor Lemasters called for a roll call vote. Acting City Clerk announced the following tally: 6 yeas. Motion passed.

Discussion and Approval of Requisition #26 Retainage Reduction.

Councilperson Simms made a motion to approve the requisition, seconded by Councilperson James.

Manager Hendershot explained that due to delays in getting the new Water Treatment Plant completely online, the Water Board had not released the 5% retainage fee that was withheld from the total cost of the project. Although the north traveling bridge is not complete, the Board did agree to retain only one-and-one-half times the cost of replacing the bridge, in the event that the Water Board will have to do the work. The amount being held is about \$200,000.00.

Mayor Lemasters called for a roll call vote. Acting City Clerk announced the following tally: 6 yeas. Motion passed.

MANAGER ITEMS:

Discussion of Moundsville Building Commission Vacancies

Manager Hendershot noted that there are currently only three active members on the five-member Commission; and another member will be resigning due to his recent election to City Council. Manager Hendershot asked Council to consider anyone who may be interested in serving.

Councilperson James volunteered his services and will submit a letter of interest.

Christmas Tree Light Up

Manager Hendershot noted that the Annual Christmas Tree Light Up, which is also the Chamber of Commerce's monthly Business After Hours, will be held November 13 at the Grave Creek Mound. Manager Hendershot also stated that, weather permitting, the Street Department will coordinate their lighting for the same time.

Ambulance Committee Meeting

Manager Hendershot confirmed that Mr. Joseph attended the Committee meeting to address concerns and complaints about previous service from Tri State Ambulance. Manager Hendershot stated the goals and objectives formed by the Committee. Discussion was held on maintaining a good relationship with Tri State while still providing adequate protection for the citizens of Moundsville.

Legal Ads by Attorney White

Attorney White presented three legal ads published in the Moundsville Daily Echo to be received and filed by council:

1. Application Fostoria clean up grant
2. Ordinance Change Planning Commission
3. Zoning John Ferris, 323 Eighth Street

Councilperson Simms made a motion to receive and file the legal publications, seconded by Councilperson Haynes. Motion carried unanimously.

MAYOR ITEMS:

* Mayor Lemasters congratulated Mr. Saunders and Mr. Young on their recent Council elections.

* Mayor Lemasters noted that 5th and 6th Streets have a lot of leaves piling up. Foreman Stocklask stated that they will get out as soon as they can.

* Mayor Lemasters received letter from The National Center on Addiction and Substance Abuse at Columbia University referring to *Family Day - A Day to Eat Dinner with Your Children*, which will be held on the fourth Monday of September each year. Councilperson Simms made a motion to receive and file the letter, seconded by Councilperson James. Council would like to be reminded of this event next year.

* Mayor Lemasters asked about purchasing shoes for City employees. Manager Hendershot explained that the clothing allowance allotment was increased for this; and the Street Department

is considering cleaning their own uniforms to save money for boot purchases.

* Mayor Lemasters asked for increased Police patrols in alleys checking for expired vehicle stickers.

Discussion and Approval of Recommendations by the Finance Committee.

Councilperson Wallace called for a Finance Meeting on November 12 at 5:00 PM.

Discussion and Approval of Recommendations by the Traffic Committee.

The Traffic Committee will meet immediately following the Finance Meeting.

Discussion and Approval of Recommendations by the Policy Committee.

The Policy Committee will meet immediately following the Traffic Committee.

COUNCIL ITEMS:

* **Wood** - Is pleased with the format of meetings, how they are open and encourage public discussion.

* Expressed pleasure that the house on First Street has been demolished.

* Announced that an Ambulance Committee meeting will be held December 10.

* Questioned financial status. Manager Hendershot noted that cash flows are good at this time.

* **Wallace** - Thanked all voters and reminded citizens that lives have been lost to defend our freedom to vote.

* **Simms** - Thanked voters.

* Expressed pleasure in working with Mayor Lemasters and Councilperson James.

* Welcomed Gene Saunders and Rick Young to Council and encouraged cooperation.

* **Haynes** - Asked for the patching of holes in the alley at Laroka Heights.

* **James** - Thanked all the voters.

* Asked again for more patrols in Cherokee Hills due to continued vehicle break-ins.

Councilperson James made a motion to adjourn, seconded by Councilperson Simms. Motion

carried unanimously.

Meeting adjourned at 8:17 p.m.

Karen L. Ankrom, Acting City Clerk

Wayne Lemasters, Mayor