

The Fruitland City Council met in Regular Session at City Hall on Tuesday, September 9, 2014, at 7:30 p.m. with the following members present:

*President Darlene Kerr, Councilor Cowell and Councilor Carey.*

Also present at the table were:

*Lieutenant Brian Swafford, City Manager John Psota, City Clerk Raye Ellen Thomas, Public Works Director Michael Gibbons and City Solicitor Andrew C. Mitchell Jr.*

Our guests included:

JP and Stephanie Merritt, Maria Stewart, Bob Janeski, Bob Marvel, Cornella Harmon, Ronnie School, Stewart Davis, Chuck Nichols, Scott Underwood, Jay Disharoon, Roland Palmer, Devin Smith, Richard Tull, Frances Jean Tull, Richard Outen, Randy Campbell, Mark Filippelli, Scott Brimfield and a few others that did not sign in.

President Kerr called the regular Council meeting to order at 7:30 p.m. and welcomed all in attendance; all recited the Lord's Prayer and Pledge of Allegiance.

President Kerr acknowledged receipt of the minutes of the Regular Meeting of August 12, 2014 and called for additions or corrections. As there were none, **Councilor Carey moved to adopt the minutes as presented; Councilor Cowell seconded and the motion passed on a vote of three to zero.**

Since **Treasurer Ortiz** was absent; **President Kerr** delivered the July Treasurer's Report due to corrections from last month.

Cash on Hand 07/01/14	\$ 76,804.36
Deposits	<u>401,279.81</u>
Subtotal	\$478,084.17
Disbursements	<u>(378,217.43)</u>
Total Ending 07/31/14	\$ 99,866.74

**Councilor Carey moved to accept the Treasurer's Report for July as presented. Councilor Cowell seconded and the motion passed on a vote of three to zero.**

**President Kerr** delivered the August Treasurer's Report.

Cash on Hand 08/01/14	\$ 99,866.74
Deposits	<u>\$ 1,101,922.26</u>
Subtotal	\$1,201,789.00
Disbursements	<u>(9, 866, 12.73)</u>
Total Ending 08/31/14	\$ 215,176.27

**Councilor Carey moved to accept the Treasurer's Report for August as presented. Councilor Cowell seconded and the motion passed on a vote of three to zero.**

**Lieutenant Swafford gave the Police and Code Enforcement reports, Public Works Director Gibbons gave the Public Works report, City Manager Psota gave the City Manager's report and City Solicitor Mitchell gave his report. City Manager Psota asked the Council to be looking out for information regarding the Morris Mill Urban Service Agreement, City Solicitor Mitchell commented that a final agreement is almost complete.**

City Solicitor Mitchell presented a status update on the progress of the amendment to the water and sewer agreement, which will establish the Morris Mill Urban Service District. While the agreement is nearly complete, he has raised a number of points pursuant to questions from Council President Kerr and City Manager Psota. The points deal with potential City ownership of the tower, deletion of the City's payment request of 2% of proceeds to the Urban Service Commission, maintenance of the tower and grounds, and antenna rental receipts. He also discussed the \$3 million state grant error.

## **UNFINISHED BUSINESS**

### **1. Paid Bill Report**

President Kerr acknowledged receipt of the paid bill reports for last month and this month. As there were no questions, **on a motion made by Councilor Cowell, and seconded by Councilor Carey, the motion passed on a vote of three to zero.**

A member of the audience, Mark Filippelli asked whether the project covered the cost of the City's existing water tower. City Manager Psota advised that it does. The existing water tower has not been rehabbed or painted since 1978, when it went online, so when the new tower is online, to provide pressure for the system, the old tower will be taken offline and rehabbed.

## **PUBLIC HEARING – AMENDING ORDINANCE # 221, THE NOISE ORDINANCE**

City Solicitor Mitchell proceeded to read Ordinance #271 for the second reading, which is an amendment to the Noise Ordinance. It would change the quiet times from between the hours of 10:00 p.m. and 7:00 a.m. to between the hours of 9:00 p.m. and 8:00 a.m., changing the times for normal activity between the hours of 7:00 a.m. and 10:00 p.m. to between the hours of 8:00 a.m. and 9:00 p.m. Therefore, the daytime hours would be 8:00 a.m. to 9:00 p.m. and nighttime 9:00 p.m. to 8:00 a.m.

President Kerr stated that the amended Ordinance would affect the entire City of Fruitland. It does not limit activities after those set hours, it just lowers the volume.

Bob Janeski questioned whether the parcel of land that is for sale at the end of the park, is in the City or County. He suggested that the City use the same noise ordinance as the County. Mr. Janeski then asked if this would be enforced by the City taking pro active steps or citizens' complaints. City Solicitor Mitchell advised that it may be both. Mr. Janeski stated that at 9:00 p.m. in the summer it is still light outside and he thinks this will cause more problems than it will cure. He feels there are other problems to worry about and does not feel as though the City is being overwhelmed with noise complaints.

Devin Smith stated he lives in Fruitland, is a school teacher and a manager for a business and is aware of noise issues. Mr. Smith also believes there should be some consistency with the County's noise ordinance and the City of Fruitland's. Mr. Smith questioned if there is an on staff dispatcher at the Police Department 24/7. Lieutenant Swafford advised that regardless of the time of day if a noise complainant is received, it is dispatched to the City and Fruitland handles the call. Mr. Smith said that he also thought that nine was too early. Mr. Smith wanted to know whether the police would respond to noise complaints at softball fields. President Kerr advised everyone is a taxpayer of Fruitland and all complaints need to be treated equally. Councilor Cowell said he did not want the audience to think this was a curfew. It does not just pertain to athletics; it pertains to the entire City.

Maria Stewart then stated that she has seven children and would like to be able to send them outside before seven in the morning, and stay out later than nine at night. She has a neighbor that does not like noise and complains about loudness, and now the neighbor will be able to enforce the noise level at new times.

Randy Campbell expressed that he hopes this ordinance does not have any effect on the Falcons or the Little League whatsoever. He expressed that the fields are the biggest draw to Fruitland, and without the support of the fields, Fruitland would lose income. He also felt it was unfair to place a curfew on the City, and wanted to know if an exception would be made for the fields.

Scott Underwood - President of Fruitland Little League – questioned as to if a study was done, and asked that statistics be provided. He would like the statistics for the two hours in question specifically. Lieutenant Swafford provided that there have been 308 violations since 2010. Lieutenant Swafford stated that however; there are times when the Police Department responds and it is not considered as a noise situation, it could be a civil offense and charged as disorderly conduct. Mr. Underwood believes the City is jumping the gun without doing a study and will just be creating problems. President Kerr once again stated that the noise ordinance is not just referring to the fields; there are other issues such as construction or college parties. Mr. Underwood opined that the majority of the citizens at this meeting were there in reference to the sports fields.

Mike Filippelli – Board of Directors for Fruitland Falcons- stated that the proposed ordinance will have no effect on the policy of the Falcons. He also went on to say that in the six years the Falcons have been there, they have received one complaint. Changes were made from that complaint and since then the Falcons have not had any other complaints from citizens, City Hall or the Police Department. He wishes that if there was a problem someone would contact them directly so it can change before a new policy goes into effect.

Joseph Merritt stated he has lived in Fruitland for 22 years and has not had a problem with noise, but went on to say that when he did he simply spoke to the offender. He would also like to see a study done.

Chuck Nichols then stated that last month he did not believe that a 1<sup>st</sup> reading was really done. President Kerr advised that yes there was a first reading and City Solicitor Mitchell questioned Mr. Nichols as to his rationale. Mr. Nichols went on to say that City Solicitor did not read the entire document due to having to make corrections; City Solicitor Mitchell advised that the Ordinance was given a proper 1<sup>st</sup> reading.

Stewart Davis stated he has heard the public opinion tonight and the public opinion is to keep the hours the way they are, if the citizens who made the complaints had been present and filled the room like the ones who are there to prove their point it would be different, but there is no one there that wishes to change the ordinance. The people that are there are the ones who care and he believes that the City is going overboard by changing the ordinance and why fix something if it is not broken.

Richard Tull stated his name, his address, that he was a retired Councilor, and was on the Council for the first noise ordinance. Mr. Tull said that he had contacted Joe Alberto at SBY NEWS and the editor of the Daily Times so that the public would be aware of the Public Hearing. He wants to know if there are violations, has anyone taken the decibel meter and actually confirmed there is a problem. He believes that he knows more about the noise ordinance than anyone present, since he helped write it and thinks that changing it at this time is premature. His suggestion is for the Council to move to table this issue at this time and talk to the citizens involved.

Jay Disharoon, Vice President of Little League and Vice President of Recreation Commission, wanted to know about the enforcement policy and how is the noise level measured. City Solicitor Mitchell stated that when the officer responds, he will ask the person to turn down the noise, and if the person obeys, it is not considered a noise violation. Lieutenant Swafford stated that by a rule of thumb District Court's noise violation, is anything that involves more than a normal conversation at 50 feet. Mr. Disharoon then asked if there was a real number to judge by, or if it is just perceived as too loud. Lieutenant Swafford advised that it is perceived.

Scott Brimfield stated he was on the board of Fruitland Little League and involved with the Falcons. He believes that the ordinance is jumping overboard as there are a lot of youth activities still going on after nine. Mr. Brimfield also believes that it should be tabled and studied to see how or where the complaints are.

Councilor Cowell then stated that everyone is aware this is a public hearing and comments are being heard and greatly appreciated. His concern is that the audience thinks that the ordinance is only for the recreation offerings for the kids. That is not the case. Councilor Cowell stated that when dealing with the government for policy and legislation, the entire general population has to be considered. He would like to recommend to the Council that they have an opportunity to consider the thoughts and concerns and come back to the issue at another time. Councilor Cowell then asked the Council table the ordinance. Stewart Davis expressed that he wanted the meeting to record no one in the audience was in favor of the ordinance.

Lee Outen spoke at this time. He stated that when he first heard of the noise ordinance, he did not consider the athletics a factor at all, he immediately thought of the college parties and the noise that comes with them.

Bob Janeski stated that he feels that it will impact not only the Little League, Falcons, but also the Redmen and the Fire Department.

Devin Smith stated that he thinks that a study should be done and be made available to the public. He also thinks that resources are going to be limited trying to enforce the ordinance. He feels that if the loud noise is due to college kids, then a fine should be issued to the property owner of the residence not the tenants. Lieutenant Swafford stated that if the problem is recurring the property owner is definitely made aware.

At this time President Kerr called for a motion to table the noise ordinance until it can be discussed further. It will be tabled until the next Council meeting on October 14, 2014 under old business. **On a motion made by President Kerr to table the amendment to the noise ordinance until next Council meeting on October 14<sup>th</sup>, which was seconded by Councilor Cowell, the motion as passed on a vote of 3 – 0.**

## **NEW BUSINESS**

### **1. Peninsula Water Discussion**

This will be tabled at this time to permit further discussion between the City Manager and Mr. Porter.

## **Public Comment/General Discussion**

Devin Smith raised an issue about problems with his bank, because tax bills were sent late. City Manager Psota apologized to Mr. Smith for the bills going out late. The City is working on a new way to send out tax bills.

President Kerr commented that the City's tax bills could not go out until after the County tax bills were issued.

Lee Outen stated that he is surprised with the lack of citizen attendance at Council meetings, however when there is a major issue, everyone wants to complain.

Councilor Cowell commented that when he moved into the City he took it upon himself to get involved and he would hope that there are more citizens that would take the time to get involved.

Councilor Carey stated he had been on the Council for 12 years and the only time that the residents show up is when there is a major change affecting the City. He urges for residents to come to more than one meeting a year.

Roland Palmer stated that he is a candidate for the Council, and he is running due to being interested in the City and had spoken with Mr. Outen in regards to it.

Richard Tull questioned if the election would still accept write in's and was advised that write in's would be allowed.

Stewart Davis suggested the City to send out election reminders to all residents. City Manager Psota advised that it was approximately \$2000.00 in postage to mail out to all residents. President Kerr acknowledged that it is always the first Monday in October on even years. City Clerk Thomas stated that it was also in the newsletter mailed out with the tax bills.

President Kerr commented that out of a City of approximately 4000 residents, there were three seats open on the Council and only three people have filed for candidacy. She would like to see more residents get involved and understand how many hours Councilors actually put in being on the Council.

City Clerk Thomas reminded the audience of the election on October 6, 2014 from 7:00 a.m. to 7:00 p.m. and urged them to tell everyone to vote as there is normally a low turnout.

With no other comments, **Councilor Cowell made a motion to adjourn, seconded by Councilor Carey; the meeting was adjourned at 9:27 p.m., with all in favor.**

*Raye Ellen Thomas*

Raye Ellen Thomas / City Clerk

*Approved, October 14, 2014*