The regular meeting of the Avon Lake Municipal Council was called to order on August 26, 2019 at 7:30 P.M. in the Council Chamber with Council President O'Donnell presiding.

Mrs. Campo led the Council, staff, and public in the Pledge of Allegiance.

Present: Council Members Zach Arnold, Eileen Campo, Jennifer Fenderbosch, Rob James, David Kos, Marty O'Donnell, K. C. Zuber; Mayor Zilka; Law Director Abe Lieberman; Finance Director Steve Presley; Public Works Director Joe Reitz; and Clerk of Council Valerie Rosmarin.

CORRESPONDENCE

A letter was received from H.R. Builders requesting Council suspend the rules for three readings on an emergency basis for Temporary Legislation #11280 and Temporary Legislation #11300.

APPROVAL OF MINUTES

The minutes of the July 8, 2019 Council Meeting were approved as prepared and published.

PUBLIC HEARING

A Public Hearing was called to order at 7:32 P.M. upon the rezoning of 525 Moore Road from R-1A Residence District to a B-2 General Business District.

For many years, a day care center operated from the building on this parcel. After the day care center vacated the premises, the owner of the property had difficulties finding a tenant for the building due to the zoning district limitations. Since the adjacent parcels are zoned B-2 General Business District, the owner requested the parcel be rezoned to that district. The request was approved by the Planning Commission on August 6, 2019.

The Public Hearing closed at 7:34 P.M.

MAYOR’S REPORT

On August 15th Abigail Green presented a Crosswalk Safety program to 10 children, ages 5 to 7 years, at the crosswalk located at Veterans Memorial Park and S.R. 83. Miss Green instructed these children on how to initiate the crosswalk light and how to
safely cross that busy location. Officer Robinson was on site to assist in the training session.

A house on the property acquired by the City at 58 West Shore Road was recently demolished. The parcel will be restored into a park.

Another property acquired by the City on Lake Road, formerly known as the Smith & Smith Building, is scheduled to be demolished.

The gazebo at Veterans Memorial Park has been completed and a ribbon cutting ceremony will be scheduled in early September.

**COUNCIL PRESIDENT’S REPORT**

In observation of Labor Day, the rescheduled Collective Committee Meeting will be Tuesday, September 3rd at 7:30 p.m.

The next Council Meeting will be Monday, September 9th at 7:30 p.m.

**PUBLIC WORKS DIRECTOR’S REPORT**

The Public Works Department weekly update was distributed prior to the Council Meeting.

All easements have been acquired for the Moore Road Culvert Replacement Project. As soon as Columbia Gas has mobilized their equipment, the gas line relocation will begin. Denes Concrete, the contractor for the project, will work with Avon Lake Regional Water to relocate and deepen the water line before constructing the new bridge.

**LAW DIRECTOR’S REPORT**

The Law Director’s litigation update was electronically distributed prior to the Council Meeting.

**NATURAL RESOURCES, ENVIRONMENTAL & PUBLIC MEDIA COMMITTEE REPORT**

Mrs. Campo reported on Lake Erie Day held August 23rd at Ohio State University’s Stone Laboratory on Gibraltar Island. The Ohio Sea Grant hosted this event, which provided elected officials and decision makers of municipalities an understanding of critical issues affecting Lake Erie.

The yearly goals of the Deer Management Plan are: (1) less than 20 deer carcass pickups; and (2) less than 10 deer/auto accidents.
• For the month of July, there were three deer carcass pickups (totaling seven for the year) and one deer/car accident (totaling four for the year).

The 2019 Deer Survey Report will be posted on the City’s website. There were 228 responses to this survey which will be used to determine the 2019/2020 culling program.

The next meeting of the Natural Resources, Environmental & Public Media Committee will be held Wednesday, September 11th at 6:30 p.m. in the Council Conference Room.

HUMAN RESOURCES COMMITTEE REPORT

The next Human Resources Committee meeting will be held Monday, September 9th at 6:00 p.m. in the Public Works Conference Room.

PUBLIC SERVICE COMMITTEE REPORT

Mr. James reported on the topics discussed at the Public Service Committee meeting held August 26th: Street Tree Planting Policy, ODOT Municipal Bridge Program, a Resolution of No Interest for 31944 Lake Road, and the retention of a bridge inspector for construction of bridges. Also, updates were provided on the public restroom at Weiss Field, 58 West Shore Road, Moore Road Culvert Project, an issue regarding a driveway on Beck Road, and the status of the 2019 Street Program.

SEWER COMMITTEE REPORT

The next Sewer Committee meeting will be held Thursday, September 12th at 6:30 p.m. in the Public Works Conference Room.

ECONOMIC DEVELOPMENT COMMITTEE REPORT

The next Economic Development Committee meeting will be held Tuesday, September 3rd at 6:30 p.m. in the Public Works Conference Room.

AUDIENCE PARTICIPATION

The following individuals addressed Council regarding Temporary Legislation #11293R:

John Shondel, 410 Greenbriar Road, Avon Lake, in support.

The following individuals addressed Council regarding the motion to approve a Second Amendment to Subdivider’s Agreement:

David Glowe, 701 Coronado Circle, Avon Lake.
MOTIONS

Mr. Kos moved to instruct the Clerk of Council to return the form to the Division of Liquor Control in the matter of a liquor license transfer to Big M Pizza LLC, 153 Lear Road and to indicate that the City does not request a hearing. The Police Chief has reviewed this request and has no objections to the liquor license transfer.

Yes: Campo, Fenderbosch, James, Kos, O'Donnell, Zuber, Arnold
No: None
Motion carried.

Mrs. Fenderbosch moved to confirm the recommendation of Planning Commission to permit a conditional use for a Historic Railway Museum at 33501-A Lake Road. The conditional use was approved by Planning Commission on August 6, 2019 and is subject to adding painted lines for traffic circulation within the museum which will be determined by the Public Works Department, Police Department, and Fire Department.

Yes: Campo, Fenderbosch, James, Kos, O'Donnell, Zuber, Arnold
No: None
Motion carried.

Mrs. Fenderbosch moved to authorize the Mayor to enter into the Second Amendment to Subdivider’s Agreement between the City of Avon Lake and Margam Investment, NWG LLC, consenting to the extension of deadlines. This extension will provide the developer with additional time to resolve a wetlands issue with the Army Corps of Engineers.

Yes: Campo, Fenderbosch, James, Kos, O'Donnell, Zuber, Arnold
No: None
Motion carried.

Mr. Kos moved to authorize the public release of the Law Director’s opinion pursuant to Temporary Legislation #11293R. After questions were raised regarding legal issues in the passage of legislation amending Codified Ordinance Section 432.30, Council requested the legal opinion of the Law Director. Law Director Lieberman and Prosecutor Reulbach conferred and tendered a legal opinion. This motion waives the attorney-client privilege and permits the public release of their opinion.

Yes: Campo, Fenderbosch, James, Kos, O'Donnell, Zuber, Arnold
No: None
Motion carried.

LEGISLATION

Third Readings:
TEMPORARY LEGISLATION #11277, AN ORDINANCE REPEALING CODIFIED ORDINANCE SECTION 630.10, ENTITLED COIN-OPERATED ELECTRONIC GAMING DEVICES, was read by title only.

Mr. Kos moved for passage of Temporary Legislation #11277. This legislation repeals an old and outdated ordinance from 1981 which limited the use of electronic games, such as video games, pinball games, and other coin operated games within the City. The Safety Committee determined that the ordinance imposing fees on businesses for these types of gaming devices is no longer relevant.

Yes: Campo, Fenderbosch, James, Kos, O'Donnell, Zuber, Arnold
No: None
Motion carried.
Ordinance No. 100-2019 adopted.

TEMPORARY LEGISLATION #11278, AN ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 208.01, ENTITLED GENERAL FEE SCHEDULE, was read by title only.

Mr. Kos moved for passage of Temporary Legislation #11278. This legislation is the companion to the previous legislation and it will repeal the fees assessed for the coin-operated electronic gaming devices.

Yes: Campo, Fenderbosch, James, Kos, O'Donnell, Zuber, Arnold
No: None
Motion carried.
Ordinance No. 101-2019 adopted.

TEMPORARY LEGISLATION #11293R, AN ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 432.30, ENTITLED STOPPING FOR SCHOOL BUS; ACTUATING VISUAL SIGNALS; DISCHARGING CHILDREN, AND DECLARING AN EMERGENCY, was read by title only.

Mr. Kos moved for passage of Temporary Legislation #11293R.

Law Director Lieberman explained that Prosecutor Reulbach and he researched the question of unconstitutionality raised and determined that Temporary Legislation #11293R is not in conflict with the Ohio Revised Code and is not unconstitutional. This legislation is an exercise of local police power and ORC 4511.75 pertaining to school buses is a general law and there is no conflict between the actions prohibited and the actions permitted by either the state or local law. The disagreement stems from increasing the penalties from $500 to $750 and imposing the possibility of jail time. The Supreme Court has ruled there is no conflict with the Ohio Revised Code as long as the penalty does not increase from a misdemeanor to a felony. Therefore, the amendment is not unconstitutional under the provision of Home Rule.
Mr. Kos referred to a Supreme Court ruling from 1923, wherein the decision stated, “in determining whether an ordinance is in conflict of general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits. A police ordinance is not in conflict with a general law upon the same subject merely because certain specific acts were declared unlawful by the ordinance, which acts are not referred to in the general law, or because certain specific acts are omitted in the ordinance but referred to in the general law, or because different penalties are provided for the same acts even though greater penalties are imposed by the municipal ordinance.”

Mr. Kos noted that it is not uncommon for municipalities to increase the penalties in state law. Basic research on this issue revealed that in the ORC Traffic Section Law, most of the traffic violations are minor misdemeanors upon the first infraction. A minor misdemeanor carries no criminal penalty. Avon Lake is not doing anything that has not been done in other municipalities with general laws by upgrading penalties from state to the local and Avon Lake has the ability under Home Rule to upgrade these penalties as deemed appropriate.

Therefore, the passage of this Ordinance is a component to act as a deterrent and will give the Judge the needed authority during sentencing. The educational component will be introduced through public service announcements on the City’s and the school’s social media. Also, printed materials will be circulated to educate the public and installation of cameras on school buses will be considered.

Yes: Campo, Fenderbosch, James, Kos, O’Donnell, Zuber, Arnold
No: None
Motion carried.
Ordinance No. 102-2019 adopted.

Second Readings:

TEMPORARY LEGISLATION #11280, AN ORDINANCE TO REZONE PROPERTIES OWNED BY MOORE ROAD PROPERTIES, LTD. DESIGNATED AS PERMANENT PARCEL NUMBER 04-00-008-102-001 AND PERMANENT PARCEL NUMBER 04-00-008-101-080 FROM R-1 RESIDENCE DISTRICT TO B-2 GENERAL BUSINESS DISTRICT, AND DECLARING AN EMERGENCY, was read by title only.

Mrs. Fenderbosch moved for suspension of the rule requiring three readings.

Yes: Campo, Fenderbosch, James, Kos, O’Donnell, Zuber, Arnold
No: None
Motion carried.

Mrs. Fenderbosch moved for passage of Temporary Legislation #11280. This legislation rezones property in a residential district to a business district and will allow
the property owner to market and attract tenants to the vacant building located on the parcel.

Yes: Campo, Fenderbosch, James, Kos, O'Donnell, Zuber, Arnold
No: None
Motion carried.
**Ordinance No. 103-2019 adopted.**

**First Readings:**

**TEMPORARY LEGISLATION #11299, AN ORDINANCE AUTHORIZING THE DONATION OF UNCLAIMED PROPERTY IN THE POLICE DEPARTMENT, AND DECLARING AN EMERGENCY, was read by title only.**

This legislation will authorize the Police Department to donate unclaimed bicycles to Ohio City Bike Shop. A list of all unclaimed bicycles has been posted on the City’s website.

**TEMPORARY LEGISLATION #11300, AN ORDINANCE APPROVING THE FINAL PLAT FOR WATERSIDE CROSSINGS SOUTH SUBDIVISION NO. 8, AND DECLARING AN EMERGENCY, was read by title only.**

Mrs. Fenderbosch moved for suspension of the rule requiring three readings.

Yes: Campo, Fenderbosch, James, Kos, O'Donnell, Zuber, Arnold
No: None
Motion carried.

Mrs. Fenderbosch moved for passage of Temporary Legislation #11300. This legislation will approve the final plat consisting of five residential lots on 12.1107 acres located east of Moore Road and north of Webber Road in an R-1 Single-Family Residence District. Planning Commission approved the final plat on August 6, 2019.

Yes: Campo, Fenderbosch, James, Kos, O'Donnell, Zuber, Arnold
No: None
Motion carried.
**Ordinance No. 104-2019 adopted.**

**TEMPORARY LEGISLATION #11301, AN ORDINANCE TO AMEND APPROPRIATIONS FOR THE CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF AVON LAKE FOR THE FISCAL YEAR 2019, AND DECLARING AN EMERGENCY, was read by title only.**

Mr. O'Donnell moved for suspension of the rule requiring three readings.

Yes: Campo, Fenderbosch, James, Kos, O'Donnell, Zuber, Arnold
Mr. O’Donnell moved for passage of Temporary Legislation #11301. This legislation will authorize the Finance Director to amend appropriations and transfer $450,000 from the Income Transfer Fund to the Income Tax Capital Improvement Fund for the Moore Road culvert repair. Additionally, appropriations of $56,500 to the Improvement Fund pertains to the City’s acquisition of 58 West Shore Road and $200,000 to Income Tax Transfer are refunds to the residents.

Mr. O’Donnell moved for passage of Temporary Legislation #11301. This legislation will authorize the Finance Director to amend appropriations and transfer $450,000 from the Income Transfer Fund to the Income Tax Capital Improvement Fund for the Moore Road culvert repair. Additionally, appropriations of $56,500 to the Improvement Fund pertains to the City’s acquisition of 58 West Shore Road and $200,000 to Income Tax Transfer are refunds to the residents.

Yes: Campo, Fenderbosch, James, Kos, O’Donnell, Zuber, Arnold
No: None
Motion carried.

Ordinance No. 105-2019 adopted.

MISCELLANEOUS BUSINESS AND ANNOUNCEMENTS

Mrs. Fenderbosch announced that Miss Danielson is working on her Gold Award on the topic of recycling and has requested plastic bottle tops for this project. Any size or color plastic bottle tops can be dropped off at Avon Lake Public Library.

PUBLIC INPUT

The following individuals addressed Council:

In opposition to Temporary Legislation #11293R amending Codified Ordinance Section 432.30:


In support of Temporary Legislation #11293R amending Codified Ordinance Section 432.30 and regarding the Deer Management Program:

- John Shondel, Greenbriar Road, Avon Lake.

Mrs. Fenderbosch moved for adjournment.

Yes: Campo, Fenderbosch, James, Kos, O’Donnell, Zuber, Arnold
No: None
Motion carried.

Adjournment: 8:43 P.M.

Approved:  
Martin O’Donnell  
Council President

Attest:  
Valerie E. Rosmarin  
Clerk of Council