



William M. Ondrey Gruber, Law Director, stated that the City and the City Planning Commission are aware of the environmental issues with regard to the property and environmental testing that was performed at the site in October and December 2018. The investigation found that there are chemicals of concern on the property which are likely present in the dredge material from Green Lake, which were placed on the property in 2006 as well as possibly from direct runoff from the streets and from the Shaker Heights Country Club's property from lawn chemicals, herbicides, and pesticides; and from asphalt that runs off from the street. There are no concentrations of chemicals of concern detected at levels above the standard for commercial properties, construction, excavation activities, and for its current use as greenspace. One chemical was found at levels that exceeded the standard for residential dwellings to be built on the land, which is why there is a requirement that the fill material be removed prior to the construction of residential housing. The chemical was found from 4 to 12 feet below the surface so the property is safe to remain as parkland, greenspace, and as a country club. It is basically material that is in the soil in the dredge material and runs off from all over the City. The environmental issues were not pertinent to the City Planning Commission's consideration of the rezoning because the rezoning does not provide approval for any specific development on the site only the potential for development. If development never occurs then the fill may remain. Thus the issue will be pertinent to any proposed residential development and would be a condition of any such development. The City's ordinance prohibits clearcutting a property of trees and or other plant growth without City approval. Tree cutting would only occur after the approval of a site plan for construction by the City Planning Commission and issuance of a building permit. The Shaker Heights Country Club may remove organic debris they have placed on the site and/or the dredge material without City approval as long as it is done without creating a nuisance.

Mr. Feinstein introduced Lee Weingart, representing the applicant.

Mr. Weingart of 16000 Aldersyde Drive stated that he is the President of Shaker Heights Country Club. He is joined by two consultants on the Shaker Heights Country Club project: Rob Meyers of Meyers Homes; and John Garvey of Partners Environmental. The club proposed a project about a year ago to the City Planning Commission to rezone about 2.6 acres of their land into two single-family lots. There have been discussions at the club over the last ten years about developing that land, which is the only land to be developed at the club, into 8 or 10 townhomes. They decided to forego that idea that is not consistent with neighborhood character, and instead they are proposing two large lots that would be developed or sold to be developed by private buyers for which they are requesting Council approval. This was approved by the City Planning Commission for recommendation to Council. Prior to the first reading before Council on May 28, 2019, they met with neighbors. They have been very active on this project for over a year and responded to the requirements of the City Planning Commission's request a year ago related to the environmental testing. He presented a preliminary site plan to illustrate the vision for the project and what it will be when completed. There has been some concern expressed by neighbors about greenspace and the tree lines. The land is about 2.6 acres and more than half will remain undeveloped because it sits in a floodplain. They are only developing about 1.2 acres of the 2.6 acres of the total 110 acres of the club. Only about 1% of the land will be developed into two Shaker estate homes. The trees to the west and east of the homes and behind the homes will not be touched. They are in the floodplain. Some of the trees in front may ultimately come out for the construction process and will be replaced when the homeowners move into their homes. He fully expects that the trees now there will either still exist or be replaced. Most of the greenspace remains other than 1.2 acres that will be developed into two Shaker estate homes. At the City Planning Commission a neighbor raised the issue of losing a wildlife refuge. That neighbor believed there were animals that congregate in that area and there are: deer and coyote. The club does not feel it is their responsibility to maintain a refuge for deer or coyote in Shaker

Heights. One benefit of the project is to remove those pests from that area. Council asked the club to mail 60 letters to neighbors a year ago which they did. There was a meeting at the club with about a dozen neighbors attending where they discussed the project. Neighbors expressed their concern about the organic dump, which is currently on the site. If the project goes forward it will be removed and not replaced. Neighbors expressed concerns about the gas well and the tank battery house, which is visible from Parkland. If the project moves forward the club will remove the gas well and the tank battery house. The eyesores on the site will be removed as part of the redevelopment. He believes this will be great for the neighborhood. They are only asking for a rezoning. They are not asking for an approval of a site plan which would come back before the City Planning Commission, and Architectural Review Board at least once, probably twice before any homes are constructed. The country club undertook an expensive environmental study which didn't find any heightened levels of insecticides, pesticides, or fertilizers, things you would expect to find in an organic storage site if a golf course were not there. He would not expect to find benzo(a)pyrene, which is a hydrocarbon that exists throughout Shaker Heights if you have a home with a tree lawn adjacent to any street in Shaker Heights. It also comes from chimney soot and from grill marks on a charcoal grill. The benzo(a)pyrene is perfectly fine where it is. It adheres to soil and does not get into the water supply. They can leave it where it is for the next 100 years without any health concerns or they can rezone the property and develop it, and remove the benzo(a)pyrene along with all the other soil they need to remove to flatten out and grade the site and take it to a disposal site. Their view is that they are better off taking it out and taking it to a disposal site than leaving it where it is, although they can leave it where it is in complete safety. The country club considers themselves a good neighbor to Shaker Heights. They have been part of the fabric for over 100 years. They were one of the original deeded plots in the City by the Van Sweringen brothers. They do not encourage the public to come onto their private space, but they don't chase anyone away. He was having dinner Friday night and someone walked through the pub patio with a dog, who was not a member. That is unusual, they don't like it, but it happens. Neighbors run, walk, walk their dogs and ski on their golf course and they don't chase them off. They feel they are doing a public service. They encourage the Shaker Heights boys and girls golf teams to practice and play at their golf course. They open their course on Monday to public safety workers in Shaker Heights to play golf. For the past five years, they are the only source of fireworks in Shaker Heights. He is pretty certain that people who are not members of the club come onto the golf course to watch the fireworks on July 4 and will continue to keep it available to the residents of Shaker Heights. They believe this project also has great financial benefit for the community. They believe the two lots together will be worth about \$3 million once fully developed, adding a lot to the property values in Shaker Heights. With that assumption it will add about \$100,000/year in increased tax revenue to the schools and library without coming out of the pockets of other residents in Shaker Heights. They believe this is a meaningful contribution from the club. They already contribute \$200,000/year in property taxes to the schools and the library, being one of the biggest property tax payers in Shaker Heights. They also contribute about \$400,000/year in sales taxes to the state and county. They believe they have given often as part of their role in the community. The people who buy the land and build the homes will be of means which will add about \$60,000 in income tax to Shaker Heights. The City Planning Commission on May 7, 2019 recommended this project move forward. There are very few possible other single-family sites for them. They have a very tight golf course and this 2.6 acres is the only land they can develop. The other land is either in a floodplain and underwater or integral to the golf course and can't be separated out to be developed. They will be eliminating the organic dump and gas well and tank battery house. They are respecting the riparian setbacks. They have accepted the conditions recommended by the City Planning Commission. They believe this is a great project for the City, the schools and the neighborhood. They are looking forward to getting support from City Council in July when they return for the third reading.

Council member Mr. Zimmerman stated that he gave an initial presentation on behalf of the City Planning Commission during the first reading. The issue before City Council tonight for the public hearing and second reading is of rezoning, i.e., the proposed use of the property right now. Single-family homes are not allowed in the zoning district where the country club is located. This would require a small rezoning, a change to our zoning map to allow for the development of the property as is being proposed. This is something that City Council takes very seriously. We very rarely get rezoning issues that come before City Council. It begins with a proposal that goes before the City Planning Commission, which is exactly what happened here. There was an initial presentation to the City Planning Commission and Board of Zoning Appeals, for which he is the Council representative. There was a rather robust discussion at that meeting last month and there was quite a bit of input from the neighbors which was very helpful. Ultimately a recommendation was made by the City Planning Commission to adopt the rezoning. It is a committee stamp of approval but ultimately the change to our Zoning Code, which is a legislative change to the laws of the City of Shaker Heights, is something that City Council must do. We have heard the presentation from the applicant and we are looking forward to hearing any input from the citizens of Shaker Heights either pro or con expressing whatever their view may be to take into consideration. Council will ultimately cast a vote if not this evening, then on third reading.

Mayor Weiss stated that this item is on second reading and under our Zoning Code it requires a public hearing which is the primary purpose this evening, to provide the public an opportunity to comment on this matter. No action is expected to be taken tonight. The third reading will be held next month.

Council member Mrs. Moore stated that she had a conversation with Doan Brook Watershed Partnership (DBWP) Executive Director Victoria Mills as a result of her role as liaison with the DBWP, regarding the riparian setback that exists and the permanent conservation easement, as well as several aspects of the contamination of the organic dump. While feelings of our watershed residents are very mixed on this issue, she believes the City in as much as it has done and the City Planning Commission with the conditions it has placed on the rezoning, have taken every aspect of the conservation easement and riparian setback to heart in the conditions. She is interested to hear what additionally the residents have to say. Council has received very little input on the more environmental aspects of this project. In the past, she has met with Mr. Weingart, and she has been very frank with him about land use practices relating to the DBWP that might be best described as not best management practices. They entail blowing leaves into the DBWP, as if it was the drainage ditch, and get carried into the inlet which is dredged periodically at the taxpayers' expense. We really have to educate the ground crews and Mr. Weingart has expressed an interest in carrying through on that which makes her very happy.

Mr. Weingart stated that DBWP Executive Director Victoria Mills had not visited the country club in about 15 years. When he became the Shaker Heights Country Club President last year one of the first things he did was reach out to her and asked her to walk the brook with him. They spent an hour and a half walking the brook starting where it enters the golf course near the parking lot between Ohio Savings and Key Bank meandering around with the brook. She was ecstatic when she saw the condition of the brook as she had not seen it in a long time. He views that as an important partnership for the club. That is the one water hazard on their golf course. They want to make sure it remains a difficult water hazard for their members to keep the handicaps high. In terms of the blowing of leaves and grass, he has spoken to the superintendent who assured him the club has not done that in over a year or longer. Perhaps that was done by the previous superintendent. The current superintendent loves the brook and knows how important it is so they have stopped that practice and they will not do it going forward.

Council member Mr. Malone asked about the condition for assignment of the easement to an appropriate third party.

Mr. Feinstein stated that the conservation easement should be given to a third party and if an appropriate third party is not found then the City can accept it. The City is the last place it would end up if an appropriate third party is not available.

Mayor Weiss then opened the floor to public comment on the proposed Shaker Heights Country Club rezoning. There is a second public hearing scheduled this evening on a separate matter so he asked residents to queue up at the podium and when their turn comes, to please provide their name and address, and give their comment. He asked them to be concise with their comments so everyone has an opportunity to be heard. If the comments they wish to make have already been made they can state if they agree with those comments. Procedurally, Council nor the staff will immediately respond to comments, but will take them all under consideration and at the end of the public hearing if appropriate and beneficial answer a question.

Mikael Sekeres of 17100 Parkland Drive stated that about a year ago they expressed concern about the dump and the chemicals that may be contained therein. They expressed this concern because they were also aware of what had been dredged from Green Lake. Buckets of golf balls were discovered and there was an unsubstantiated rumor that there was a golf cart discovered there as well as a flag from one of the holes on the golf course. Initially the plan for the lake to be dredged had to be modified when the dredging material was found to be too toxic. It is as if while they all subscribe to the motto "Doan Brook ours to protect," the country club's motto appeared to be "Doan Brook ours to infect." He was not surprised when he learned there were toxic chemicals discovered in the dump, in particular, a polycyclic aromatic hydro carbon, caused them a lot of concern. He is director of the leukemia program at a large hospital in the area. He is also vice chair for clinical research within the cancer center there. More importantly he is a cancer epidemiologist. He takes these sorts of things to heart. He did a scientific search on articles between polycyclic aromatic hydrocarbons and their link to cancer and found approximately 4,000 scientific articles in PubMed, the national library of medicine search engine for scientific articles. These were not articles about exposing mice to absurdly high levels of polycyclic aromatic hydrocarbons to see if they develop cancer. These were epidemiologic studies in factory workers. One such article talked about how factory workers are exposed to polycyclic aromatic hydrocarbons many times through inhalation and also through cutaneous exposure when they touch the substances. A quote from this article says these are among the most toxic carcinogens currently known. It goes on to talk about the increased risk of developing lung, skin and bladder cancers from exposure to these chemicals and estimates that 3% of lung cancers in the United States are attributable to exposure to these chemicals. When people are exposed to these the risk of developing lung cancer increases by 30%, the risk of developing bladder cancer increases by about 30% also. These are significant. These are not minor risks of developing the cancer. These are real. You may wonder what happens in soil. There have been some studies looking at soil concentrations of polycyclic aromatic hydrocarbons that have been performed in a variety of countries. Once again they show the risk of cancer is much higher through skin contact, breathing it in and from ingestion. A lot of us in this room have children. We have seen children play in dirt. Not our proudest moment when we have seen our children eat dirt. To say that this won't happen, that these are absurd aspects of exposure is not realistic. Families living on top of the soil will be exposed to the contents of the soil. You can then say what about the plan from the country club to mitigate this. There has been a study specifically about mitigation of polycyclic aromatic hydrocarbons contaminated soils and cancer risk. The conclusion, "ultimately these strategies in the studies reviewed were unable to successfully remove carcinogenic polycyclic aromatic hydrocarbons from contaminated soils to concentrations below

the target cancer risk levels recommended by the US EPA.” Even strategies to remove this did not work for future cancer risk. He is asking for the safety of this community to not allow families to live over the soil where we can’t assure these carcinogens will be removed. He asks that Council not be the committee to allow families to live on top of this toxic soil.

Doug Johnston of 17210 Parkland Drive stated that he is not a cancer epidemiologist, but he takes the advice of an expert to heart. He asked Council to consider in broad strokes why we need to go to the extreme of rezoning what is relatively precious greenspace in our City. If they look at the map, most of the housing lots in Shaker Heights were defined in the original plot plan. This plot of land was defined as open space, as parkland, in the original Van Sweringen plot plan and that land was deeded to the country club. Unfortunately for him there was only a 100-year limitation on redevelopment of that land, which the country club now intends to take advantage of. He does not believe anyone present is suggesting that the country club as a whole is a bad neighbor, but it has been a bad neighbor to him. They have lived across from the dump for 8 years. It is messy and unattractive to look at from the street. It is maintained in a way that no citizen of Shaker Heights would be allowed to maintain one’s home or commercial property. We are being presented with the alternative of leaving the dump as is, an eyesore with toxic chemicals under the soil, or having potentially attractive homes on the site that will supposedly sell for \$1.5 million each. His neighbor’s house is in that range, a beautiful home built in the 1930s. It has been on the market for hundreds of days and has not sold. There are a number of properties in his neighborhood in the same value range, beautiful old homes, which are available. He asked why we need two more for \$1.5 million homes. If we want to make a decision about housing in Shaker, think about lower income homes. Think not about abandoning what is a few acres of greenspace on a small portion of the country club that will never be regained. There is little open land in Shaker available to us. He asked Council to consider preserving this piece for future generations. He asked to have the mess cleaned up, allow it to go back to nature, and have the park that was designated in 1912.

Patricia Barz of 18040 South Woodland stated that she is an attorney although she is not licensed, but reviewed the zoning ordinance section 1213.07. Based on her personal experience she feels that this is the critical starting point and Council, the Mayor, and public bodies must act in accordance with the statute. The statute specifically states that the power to amend the zoning ordinance is not an arbitrary one, but one that may be exercised only when the public good demands or requires the amendments to be made. When you look at the evidence presented by the citizens in attendance tonight, at the City Planning Commission, and at the split vote of the City Planning Commission, the principals stated in the zoning ordinance cannot clearly be said to be satisfied. She needs to review the materials more carefully but she believes of the factors that are stated in the ordinance to be considered, there has been no objective, persuasive evidence presented that the value of the subject property is diminished by the existing classification. Also there is no indication at all in the eyes of the City’s residents, some of whom are here today, of any increase in the public peace, health, safety, and welfare that would be caused by this rezoning. That is a specific factor that the Shaker ordinance requires Council to consider. She thinks there has been and will be further testimony of the use and enjoyment of the country club’s greenspace being preserved for over 120 years. The subject property is perfectly suitable for the current zoning classification and should be absolutely maintained in compliance with applicable ordinances and law. By that she means that should this use continue in any form she will be looking at the dump to find out why it has been there and whether it should still be there whether or not the zoning change is granted. We have no assurance that Shaker Heights Country Club will not seek additional splits and rezoning and in fact they said they had hoped to build townhomes here, but only for reasons of practicality and finance, not out of the goodness of their heart did they decide to look for rezoning single-family lots instead. The fact that there are few additional possible single-family sites is in fact something that helps preserve the value of

our properties in Shaker. That is why we are glad we are here and thrilled to be in the homes we have. As a final point, when she moved here in 1993 what kept them from moving elsewhere was the greenspace. The fact that the country club was preserved, that their property backs up to the country club, that both of their children attended the Shaker Heights Public Schools, privacy in their backyard, and with greenspace in the neighborhood is extremely valuable. Two homes may not seem like much but it is added traffic, congestion and they are buildings. Whether or not the trees that would be gone are not such great trees is not the issue, there would be fewer trees and less greenspace. She has been here since 1982, loves this community, and is active in the community. Shaker's greenspace is incredibly important to her and a lot of her friends. She hopes Council takes that into account.

Christina Bordonaro of 3140 Attleboro Road stated that she has a bird's eye view of where the proposed homes will be. She agrees with everyone who has spoken so far. She wants to reiterate that it was a split vote. She thinks that sends a message. She feels their concerns resonated with some people on the City Planning Commission and hopes Council will take that into consideration. She asked why we are rezoning before we have answers to some very important questions. She asked about the plan for remediation of these chemicals. She asked about the cost and if it makes this project in and of itself cost prohibitive to begin with. She asked why we are rezoning Parks and Recreation land if it does not make sense. She asked about the material when airborne is possible to breathe in with her windows open or safer to leave alone. She asked who did a study on that and who is qualified to answer that question. The City has a responsibility in this. The City sanctioned the dumping of the sediment there and expected the club to remove it and they did not. The City expected them to be good stewards of the land and they haven't been. She asked why she should believe they will remediate this properly. The biggest indicator of future behavior is past action. The City has the responsibility to make sure it is done right, it is safe, that residents are not breathing it in, and that everyone walking their dogs in front of there is not tracking it into their homes on their jogging shoes. This land was dedicated for 100 years to be parks and recreation. She does not believe the original plan was to have two houses there.

Jennifer Lehner of Parkland asked about the procedure for the public hearing.

Halle Moore of South Woodland stated that she found the golf seat on the lake. She also found golf balls, rakes, and large pieces of wood. She sees the greenspace as a buffer from all the pollutants of the golf course and everything that goes on there. It is between the houses and people walk by there to the bridge at the lake. She has seen mink by the lake trees on Attleboro. She has seen migratory birds, orioles, and a beautiful influx of nature since the dredging. A lot of those animals need a place to be. If they are not there they will be eating the club's hostas. That greenspace is what it was intended to be. They do not need more houses. We have wonderful houses. There is a gorgeous house on Parkland that has not sold. It does not seem like that should be our priority in Shaker.

At 7:51 p.m. the Mayor closed the public hearing on the Shaker Heights Country Club rezoning. He thanked everyone for participating and providing information. He asked Council to submit any questions prior to the next meeting so that staff would have time to respond.

Director Gruber stated that as the Mayor and Mr. Feinstein reported, this agenda item is currently on second reading. Three readings are required for any zoning change, so there will be at least one more reading. It can remain on third reading indefinitely, Council can vote on it, or choose to do so at a later date. Once approved by Council it is final. A state law allows referendum on any ordinance that is not passed as an emergency, such as this one, which residents may take advantage of if they see fit, but it is not a City procedure that guides that. To clarify, the dredge material on the site currently, was dredged in

2006. There was further dredging done in the past year which was never intended to be placed on this site. There were some changes in how it was transported, but the reasons were really the cost of dewatering and where it should be dewatered before it was finally deposited and how that would be done. It is cheaper to transport material that does not have a lot of moisture in it. The material was legally and safely deposited, and approved by the Ohio EPA on a site in Bedford that the City owns, but it was not disposed of in a hazardous waste site. It was not required to be deposited in a hazardous waste site. It is simply a compost facility where the City is able to place the material. There never was an agreement or requirement that the country club would remove the material in 2006 once we placed it. The country club did not violate any agreement. The country club agreed to allow the material to be deposited on their property by the City's contractor.

Mayor Weiss stated that we have heard from the residents and acknowledge the information that has been provided on the environmental. It will all be taken into consideration as we proceed on this matter.

Council member Mr. Zimmerman thanked the residents. He met some of them at the City Planning Commission, and others came to add their thoughts, which is really helpful.

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**Ordinance No. 19-46, by Mr. Zimmerman, approving the recommendation of the City Planning Commission to amend the Zoning Map and the rezoning of a portion of Permanent Parcel No. 733-26-001, with conditions.**

Mayor Weiss stated that this item would remain on second reading.

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At 8:25 p.m., the Mayor opened the scheduled public hearing on the Outdoor Refreshment Area (ORA).

Joyce Braverman, Director of Planning, distributed a chart of best practices. She stated that this agenda item is on second reading. The Ohio Revised Code Section 4301.82 has a recent addition from about a year ago for open container districts that are in entertainment or downtown districts. That code also establishes regulations for establishing those districts. The main part of that regulation is that the applicant makes a petition to the Mayor who then makes a petition to Council for consideration. There is a requirement for a public hearing and we are required to advertise twice in a newspaper. Council has no less than 30 days nor more than 60 days to actually take action from the time of the first public hearing, scheduled tonight. This was advertised in the *Sun Press* on May 30 and June 6 with action required on June 29 and July 29. A third reading is scheduled for July. The ordinance must include the boundaries of the district, signage, hours of operation, public safety, sanitation plans, manpower plans, and the type of vessel that you may serve alcohol in. Council reviews the ORA in five years and every five years after that. Council also has the authority to dissolve all or part of an ORA. We found 14 operating ORAs in the State of Ohio. Of those 14, 11 have more broad hours, such as noon to midnight, or noon to 10 p.m.; and 3 are event based, which means it operates only during a special event. The two that are most similar are: in downtown Toledo on Adams Street; and in Liberty Center, a mixed use development, which is in the suburbs outside of Cincinnati. They don't have the same issues we have. The key takeaways of the best practices that we should look at are enhanced signage that explains the rules of the ORA on the sign; as well as plastic cups that are printed with the rules. An individual who has a cup will know by looking at their cup what the hours and rules are about going into other establishments. Many of the districts have

additional security during the ORA hours. Most of them also have websites with the rules and FAQs. Some of them even have the hours for each given day. She presented a webpage from Liberty Center. The City of Cincinnati started this legislation for an all-star game a few years ago, but the merchants decided they could do what they wanted with a special permit for a festival instead. The same thing happened in the flats east bank, which has been stalled for many months. Many places have looked into the ORA but have not proceeded for whatever reason.

Council member Mr. Williams asked about the Worthington location on the best practices chart.

Director Braverman stated that Worthington is a suburb of Columbus. They have a unique ORA with a downtown strip that is quite long. This is for patio service at the restaurants. Their right-of-way ends at the front of the buildings. If restaurants wanted to have alcohol they could not do so in the right-of-way. Theirs only pertains to patio service in the right-of-way in their downtown. It does not allow carrying vessels from establishment to establishment. There are some unique ways this Ohio Revised Code is being applied. The code states that a city over a certain population may have two. For our population size we can only have one. Toledo has two. Director Braverman then introduced Jason Russell from RMS.

Jason Russell, RMS Van Aken District General Manager, explained the petition they submitted to Mayor Weiss to create an outdoor refreshment area in the Van Aken district. The State of Ohio passed House Bill 47 in 2015 that established the Ohio Revised Code Section that permits the creation of these outdoor refreshment areas in cities the size of Shaker Heights. The amendment in House Bill 342 passed in 2016 is what actually allowed communities as large as Shaker Heights to do so. The basics of the outdoor refreshment area is that it allows bars and restaurant patrons to legally walk around a designated area with an alcoholic beverage that has been served by the qualified liquor permit holder. What is unique about that is you can take your alcohol from Craft Collective in the Van Aken district and walk out into the park and enjoy it as long as it is in the predetermined boundaries and within the days, times and events as established by the City Council or legislative authority in that community. He stated that there were changes in the petition since he presented this to Council several weeks ago. They reduced the weekday nights to 10 p.m. from midnight. He updated the permit holders so he had the input of their permit numbers and their classifications with the Ohio Liquor Control Board. They also revised the language so that the ORA cups cannot go into another premises no matter what. Previously they discussed as long as it was not another liquor serving entity you could enter it, but their lawyer determined that is not the case. You must discard the cup before you enter any other establishment. The ORA as proposed by RMS, the developer of the Van Aken district, the boundaries would simply be the bounds of the new phase that RMS built for the new Van Aken district. It would go as far north as Tuttle and Farnsleigh, as far west as Walker and Farnsleigh, and as far south as Tuttle and Meade. On the east end the boundary includes the entire buildings but the reality is as a pedestrian you cannot go beyond the face of the buildings with a cup from the ORA. They will require signage at each location. They proposed 22 different signs to make sure they properly sign any opportunity that a patron has to exit the predetermined boundaries. They want signage to welcome people in and then as they leave so they know they cannot take the cups outside of the district. As soon as they cross the boundary they are subject to the traditional city and state laws regarding open containers. They will be working with the Architectural Board of Review for the final signage. Monday through Thursday the hours of operation are from 4 p.m. to 10 p.m. On Friday and Saturday the hours are from 12 p.m. to 12 a.m. On Sunday the hours would be from 12 p.m. to 10 p.m. Another important aspect of the ORA legislation from the State of Ohio requires the applicant to submit a safety plan on how they will provide safety services throughout the ORA. RMS will provide a private security officer at their cost to patrol the ORA during the hours of operation. The Shaker Heights Police Department as part of their normal patrolling will help regulate patrol, but they are not required to do so.

The primary responsibility of security lies with RMS. Another aspect is a sanitation plan. There are a lot of people with cups in the environment and they have to make sure they keep the environment as clean as possible. RMS will provide litter control for the district with their own maintenance staff. They are also in a partnership with the City, Tower East, and University Hospitals to provide the Van Aken Ambassadors who are also responsible for litter control. They will sweep their streets twice each week when weather permits in the summer months and they have 11 trash receptacles throughout the district. Everyone asked about the cup. They want a distinctive cup that has a specific logo on it to help with the policing aspect so they know exactly that the cup was purchased at one of the liquor premises in the ORA. They have spoken with the Planning Department on how they can make sure the community is aware of the different rules and regulations. They have seen through best practices to include the rules on the cup as well. They have also committed to making sure the cups are recyclable or compostable to reduce their carbon footprint. He presented a list of all the permit holders in the district. There are 4 open and operating premises that have alcoholic beverages. Banter is the only one that does not but their final inspection is in a week so that will make 4. You need 4 active licenses in place to create an ORA. There are 4 others pending: Nature's Oasis hopefully opening this week; Manifest opening in August; Sawyer's restaurant opening late this summer; as well as the yet to be named cocktail bar making a total of 8 permit holders in the district by the end of this summer. All 8 are not required to participate in the actual ORA, so they will get a designation on their liquor permit that says they can do this, but from a management standpoint a restaurant does not have to opt in. They can choose to not provide cups so patrons will have to consume all alcohol on their premises. This list also includes the hours of operations for each establishment currently open. While they may be open later, such as Craft, they will no longer be able to serve alcohol in those cups beyond the hours of the ORA. As a part of their security and policing, people out after 10 p.m. with a cup will have to discard it. As mentioned by Director Braverman, these are elsewhere in Ohio, like Canton, Lorain, Middletown, Liberty Township, Lyndhurst and Worthington. Toledo is a great example for us to follow as a much larger city. What makes this development unique, which has also been one of their strongest attributes, is that they are integrated into the neighborhood like Toledo. Liberty Township and Legacy Village are isolated developments within themselves so it is easier to patrol as they don't interact directly with other businesses outside of the district or residents. To that end, community engagement has been really important for RMS as Shaker residents visit the Van Aken district every day. Most people walk, ride or push strollers to the district so they want to make sure they are reaching out and communicating with their neighbors. They met with the Thornton Park neighborhood on May 18 in the Market Hall. They met with Lomond and Sussex jointly in late May in the Market Hall as well, to talk through the process so people understood what the impact could be in their neighborhood. Tomorrow he is meeting with the Van Aken District Merchant's Association that is put together by the Shaker Heights Development Corporation to talk with other business owners in the district so they understand how the ORA could function as proposed by RMS at this time. Two frequently asked questions he often gets about the ORA are if patrons can take a drink inside the Market Hall. The answer is no. The ORA only covers outdoor areas. It is very clear in the state code. They are working on another solution for the interior of the Market Hall. The other question he gets is whether patrons can bring outside beverages. That is an absolute no. You can only consume alcohol that is purchased from a liquor premise inside the ORA in the special cup.

Council member Mr. Williams asked about the open container ordinance and whether there would be an admonishment for the first offense.

Director Gruber stated that Police always have discretion whether to stop someone or cite them. They make those decisions with traffic and will do the same with open containers. He is not aware how often that comes up in Shaker in terms of citing for open container. We do cite people and will continue to if

the occasion arises for disorderly conduct or causing any trouble in the ORA area. The Police can certainly enforce the law. There are other ordinances and statutes that can be enforced in addition to simply the open container law. If somebody is not violating the open container law because they are using the cup but they are doing something else wrong, they can be cited or arrested. As far as people crossing the boundary line he would be surprised if the Police Department would be in the business of standing at the sign waiting for someone to step over it to cite them. He believes the Police will use their discretion wisely. If the Police are in that situation, they can advise people that they cannot go any further. If it becomes a problem then that might require stiffer enforcement.

Council member Mrs. Senturia asked about composting cups. She can't imagine that RMS has solved the global crisis in the plastics market as part of this program. She asked how they would be recyclable because they are not. Composting only works with a major program and she asked if they were partnering with a group like Rustbelt Riders to compost cups and how that would work. The experience around the City with recycling bins is that they are full of trash and therefore unrecyclable. She appreciates that RMS is seeing the challenge of this. She asked what new residents in the district think about this.

Mr. Russell stated that they actually do partner with Rustbelt Riders now. They provide services for Brassica, Rising Star, and soon to be Nature's Oasis, so they are already on site providing service. RMS asked them for a larger tote to put more into it. RMS recycles in the Market Hall and every time they pull a bag it is contaminated. It is tough to educate the community on what is recyclable and what is not. People find the first receptacle and dump whatever they have into it. To this end, they have talked about creating sleeves so that is the only thing contained as opposed to a trash receptacle. They could also do a special ORA cup discarding area only large enough for a cup. One of the primary comments from residents in the district they have seen with all the events they have had this summer with the amount of activity in the district is that they very much enjoy it. He has spent a lot of time with residents who have been there since August and September of last year and a lot of them have been waiting for all the retailers to open because that is the experience they bought into. They want to live in an urban dense area with a great lush suburban surrounding it. That is what they are looking for. Most of the residents in the RMS apartment building that he sees in the beer gardens, patio, or Market Hall each Friday night understand this because this is what they moved here for. It is important for RMS to make sure they police it to make sure it is a great environment that people want to be in. If that becomes an issue then it affects the rest of the district.

Council member Mrs. Senturia asked about open containers at block parties.

Director Gruber stated that they are probably unsanctioned except that the City grants a license for residents to have a private party using the right-of-way and no alcohol is being sold. The fact that it is in the right-of-way technically probably violates the ordinance and statute but he is not aware that the Police Department has enforced that.

Mayor Weiss stated for the record that he has never seen sales of alcohol at block parties.

Council member Mr. Zimmerman asked if there is any way other than the ORA that patrons could take a glass of beer to the inside of the Market Hall. He asked if the issue is that inside it goes from one permit holder to another and there is no way to determine where they bought it.

Mr. Russell stated that unfortunately under existing state law, we cannot do that, so we are working to see if we can change that. A lot of people talk about how at the Indians game someone can carry a drink

around, but in those instances there is one liquor permit for the entire stadium. With the Market Hall there are 3 permit holders within the same building, so we have to stay within each individual area.

Mayor Weiss stated that this is one of those areas where the law has not kept up with the market reality so the hope is we can change that.

Council member Mr. Zimmerman stated that is a good point, but the reality is if the ORA is enacted we may have to double up on public education efforts. He presumes the Police Department is satisfied with the proposed security plan.

Council member Mr. Malone stated that he is a little concerned. Van Aken has been so successful so far with such a positive vibe, he worries that we may be moving too quickly. He wonders if there is a way to do this on a trial basis maybe only for special events until we can make sure that the security plan does work. He is skeptical with one private security guard being able to police the entire area with lots of exits and entrance areas. It will be harder to patrol because it is a neighborhood unlike Legacy Village or some other places where this is used. It looks like they only allow it for special events. He thinks it is terrific that Van Aken is doing so well, but he hopes that we don't move too quickly and disrupt things. We want to build on the positive vibe that is happening here.

Council member Mr. Zimmerman stated that there was a market survey from the outdoor events that we had and asked if RMS is aware of any instances of people getting out of hand.

Mr. Russell stated that they have been very fortunate throughout the summer with all of their events whether at Shaker Plaza or the new portion of the Van Aken district. They have hosted beer gardens the past two weekends. The Cleveland Flea had almost 6,000 people the first Friday in June and that is much more difficult to police. In that scenario they had two officers on staff that night. They have had good success in all of their events, but to Council member Mr. Malone's point, it just takes one, so they do have to be vigilant to make sure all the events are successful. Each special event they pull an F2 permit to allow them to serve and sell alcohol, so even with the Cleveland Flea events, Bloom and Buzz, the Beer Gardens, the F2 allows patrons to walk within the boundaries they submit to the State of Ohio. That creates conflicts because if you are in Craft Collective you can't bring a beverage from the F2 into Craft Collective. If they have any issues where they need security it is where they have the large events and people want to take alcohol out of or into Craft Collective. That has been the biggest issue to date.

Council member Ms. Williams asked if they can add other conditions or if they have complete flexibility.

Council member Mr. Malone stated that 5 years seems like a long time to wait to review the ORA.

Director Gruber stated that state law requires a review every 5 years but Council can certainly choose to review it if a problem arises in less than 5 years. They can also add a condition to review it in 2 years, etc.

No member of the audience offered public comment. The Mayor then closed the public hearing on the Outdoor Refreshment Area.

\* \* \* \*

**Ordinance No. 19-47, by Mr. Williams, to approve the creation of an Outdoor Refreshment Area as permitted by Ohio law for the consumption of alcohol in specified public areas of the Van Aken District Development.**

Mayor Weiss stated that this item would remain on second reading.

\* \* \* \*

It was moved by Ms. Williams, and seconded by Mr. Williams, that the minutes of the special meeting of May 13, 2019, be approved as recorded.

Roll Call: Ayes: Mr. Williams, Mr. Zimmerman, Mr. Malone  
Mrs. Moore, Mr. Roeder, Ms. Williams

Abstain: Mrs. Senturia

Nays: None

Motion Carried

\* \* \* \*

It was moved by Mrs. Senturia, and seconded by Mrs. Moore, that the minutes of the regular meeting of May 28, 2019, be approved as recorded.

Roll Call: Ayes: Mr. Williams, Mr. Zimmerman, Mr. Malone  
Mrs. Moore, Mr. Roeder, Mrs. Senturia, Ms. Williams

Nays: None

Motion Carried

\* \* \* \*

The Mayor invited members of the audience to comment on any of the agenda items.

Emily Meyer, a legal clinic attorney with Equality Ohio, a statewide LGBTQ education and advocacy organization. She commented on ordinance numbers 19-43, and 19-49 and applauded the leadership of the City for fostering a culture that is welcoming to the LGBTQ community. She hopes that Council will ultimately vote to make the law match their current culture of inclusion. The City's attention to this issue is especially needed now when rights and lives are under threat at the state and national level and misunderstanding leads to ignorant and harmful words and acts both close to home and across the country. It was just four years ago when marriage equality became the law of the land and people across the country have since been able to marry the person they love. That celebration is soured when someone can celebrate a marriage to the person they love and then be fired from their job, denied a loan or lease, or turned away from a public space the next day simply because of who they are or whom they love. In an age and particularly in a year when so many people in our country are being told in word and action that they do not belong, the City has the opportunity to send a message to the community that all are

welcome to earn a living, and enjoy public spaces and services in Shaker Heights no matter who they are or whom they love. These ordinances boil down to core American values that we all can agree are important: fairness, equal opportunity, and freedom. Fully inclusive non-discrimination protections are about recognizing people for their contributions to our society, not excluding them based on stereotypes or bias. It is about recognizing the dignity of the diverse array of human beings who live among us. Every day they talk with Ohioans who feel freer to be themselves in spaces where they know they can see themselves protected and validated in the law. They are committed to supporting Council and community members as they have with many other cities in the state who have passed similar ordinances. She applauds the City's efforts here this evening and looks forward to celebrating with the City when we have passed our amendments to the Fair Housing ordinance at a later date. She congratulated the City for making Shaker Heights a fully welcoming community in Ohio.

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**Ordinance No. 19-36, by Mr. Zimmerman, amending Sections 1262.03 and 1263.09 of the Zoning Code of the Shaker Heights Codified Ordinances in order to improve the regulation of Type A and Type B child day care homes and to protect the public health, safety and welfare.**

Daniel Feinstein, Senior Planner, stated that this ordinance is on third reading. Last fall City staff started an administrative review and in September through October there was an application for a Type A home day care. During that process of going through the City Planning Commission (CPC) and to Council we heard lots of comments both for and against with issues such as noise, traffic and property values being concerns, with support for in home day care that is community based child care that is affordable, well run and flexible. Out of that discussion Council decided they would set a moratorium for six months to study the issue so no more Type A home day cares were permitted to submit for those six months. In November, there was a Neighborhood Revitalization and Development Committee meeting and Council work session where this was discussed. In January there was a CPC work session where it was further discussed. After that input staff prepared a text amendment. On April 2, 2019, the CPC recommended approval of the Zoning Code text amendments with the condition to clarify the definition of "violation" in Section 1263.09 (D)(1)(b) that was subsequently revised before it was submitted to Council to read, "violation of this Chapter and Chapter 1262.03." On April 22, 2019 Council heard this ordinance on first reading. On May 28, 2019 Council held a public hearing with the ordinance on second reading. After a good public discussion comment period Council referred a specific question regarding home ownership for Type A home day cares back to the CPC. The CPC discussed that point at the June 4, 2019 meeting. There were differing views discussed as well as public comment. The CPC declined to modify their previous recommendation to Council. This item is for a Zoning Code text amendment to child home day cares. Both Type A and Type B are regulated in two different sections in the City's Zoning Code: under accessory uses and conditional uses. Type B home day cares with up to 6 children are a permitted accessory use in single and two-family zoning districts. Type A home day cares with up to 12 children are only allowed as a conditional use permit in a single-family home. There are changes to the accessory use Section 1262.03 for Type B home day cares, which specifically states that their registration is required, and inspection is required of all child home day cares. There are some language updates to match current City department names and lack of a health department, etc. There were also changes to the conditional use Section 1263.09 for both Type A and Type B home day cares. They added the Type A and Type B home day care definitions from the Ohio State Revised Code, along with some additional requirements for Type A home day cares with conditions that were imposed by the CPC and Council for the Price Loving Arms day care on Aberdeen Road. Those additional conditional use permit requirements that are

now proposed in this ordinance are verification from the Bureau of Child Care Licensing and Monitoring that there is actually adequate space in the house, demonstrating a track record of already operating a Type B home day care at that residence, a parking pick up and drop off plan, all interior housing code violations in spaces used by the children are corrected, outdoor play areas enclosed by a 6-foot solid fence, a continuing obligation to comply with all City ordinances including the noise ordinances, outdoor play hours be limited from 9 a.m. to 7 p.m., Saturday and Sunday be limited to 6 children, and that inspections may be conducted by the City on an administrative review level after one year.

Council member Mr. Zimmerman stated that this item has been reviewed by Council many times. The CPC discussed the home ownership suggestion but decided not to add it as a condition. He clarified that the operator must live in the unit. He felt that was an important point that there is already a requirement that you cannot have an absentee operator and referenced CPC Minutes Page 5396 from May 7, 2019.

Director Gruber stated that in Section 1262.03 (B) it says, "Any child day care home shall be located in the primary residence of its operator." Additional requirements for Type A home day cares requires they comply with Section 1262.03. The primary operator can be an owner occupant or a tenant. The owner and operator of the day care must live in the home.

Mayor Weiss stated that it is fair to say there were mixed views at the CPC meeting, and varying levels of agreement or disagreement regarding whether there should be an ownership requirement for an operator of Type A home day cares. As a result of there not being a consensus to change it, the CPC left it as is. There was a fair amount of public comment both for and against this particular concept.

Council member Mr. Zimmerman stated that to be fair on that point, a number of the people who spoke we had seen at various times before Council and the CPC expressing their view and their view aligned or didn't align with the proposed condition based on their overall feeling about Type A home day cares.

Council member Mrs. Moore stated that she attended the CPC meeting and heard the full discussion. She understood the points that were made especially with respect to the impact on trying to create a division between people who operate a day care and were renters versus people who operate a day care and were homeowners. She thinks the CPC members considered this issue carefully. The fact they actually felt it was discriminatory weighed in with her and she can't change their views. It did not convince her but that was their feeling, and she has to respect their authority. She will be voting no tonight on this issue. She reiterated that the Price Loving Arms day care is not at issue here. They have been grandfathered in and applied before this came up as an issue and went through all of our processes. She assumes they will continue to operate the very good day care they have, enlarge that day care and do a great job. She believes we have shown in many ways that we have ample in home Type B day cares in Shaker Heights. Indeed we do not even know how many Type B home day cares currently our operating within our City because we haven't required them to register. She has lived for 37 years in the southern part of Shaker Heights, defined as south of Van Aken. The quality of life in the southern neighborhoods she believes is in a delicate balance. The homes are separated by a few feet from one another. She can look into her neighbor's bathroom window and say hello to them. That is how close they are. Conditions for a Type A home day care were carefully defined by the CPC and she appreciates all of the effort that went into this as well as that of City Council. She believes the best job that could possibly be done in terms of specifying conditions was done. She really appreciates that, but it is still not enough for her to assure that a day care operation with up to 12 children will not negatively impact what she considers to be a very delicate balance of quality of life in our neighborhoods, especially the southern neighborhoods where many of the Type B home day care currently are. She believes that additional Type A home day cares are not needed at the

present time. Indeed, they may never be needed to meet the day care needs of our population in Shaker Heights. The argument did not hold water with her that we have such outstanding needs for in home, affordable day care, in our City that we need to reach out to Type A home day cares. She feels that meeting the needs of Shaker Heights would have moved her one way or another, but she was not convinced. She does not feel obligated in any way shape or form to meet the needs of the region for affordable day care. She certainly does not feel any particular need to meet the needs of for profit day care operations that want to open up and do business in our City. For those reasons she is going to vote no.

Mayor Weiss thanked everyone and stated that he appreciated the efforts of Council, staff and the public for their continued involvement and interest in this matter.

Moved by Mr. Zimmerman, and seconded by Mrs. Senturia, that Ordinance No. 19-36 be enacted as read.

Roll Call:	Ayes:	Mr. Williams, Mr. Zimmerman, Mr. Malone Mr. Roeder, Mrs. Senturia, Ms. Williams
	Nays:	Mrs. Moore

Ordinance Enacted

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**Ordinance No. 19-58, by Mr. Zimmerman, administrative acceptance of the approval of the City Planning Commission and confirmation of the granting of a Conditional Use Permit for a B-1 rooftop bar as a use similar to a wine bar, located at 3386 Tuttle Road, pursuant to Section 1213.05 of the City's Zoning Code.**

Joyce Braverman, Director of Planning, stated that the City Planning Commission approved a conditional use permit for the B1 building for a roof top bar. This use is similar to a wine bar. Our code does not allow bars. There are conditional use permits available for a wine bar or a brew pub. This was approved by the City Planning Commission with the following conditions: the hours of operation do not exceed Monday through Thursday from 11 a.m. to 1 a.m., Friday and Saturday to 2 a.m., and Sunday to 11 p.m.; subject to the continuing obligation to meet our noise ordinance; to be in full compliance with state liquor permit requirements; to have patron policies and to be in compliance with those; to have a security plan that will be submitted to the City for approval and to comply with that plan; to remain free from a pattern of criminal activity, including but not limited to charges under the criminal activity ordinance Chapter 109; and subject to review after 6 months. The conditional use permit does require Council confirmation. The applicant does propose to establish a roof top bar above the Sawyer restaurant on the second floor. Sawyer's restaurant will provide a food menu in that space and it will also serve as a waiting area for the restaurant. They propose to serve wine, beer, cocktails, as well as non-alcoholic soft drinks. This item is requested with a suspension of the rules in order for construction to continue on that space.

Council member Mr. Zimmerman stated that this item was reviewed and approved by the City Planning Commission. There was a very thorough report. A conditional use permit must come before Council as an extra layer of protection because it is not the primary use. It was explained that the original concept was to be part of the restaurant but for business reasons that will not be the case, but it will still be located there under a separate operator working cooperatively with the restaurant. It will be a good place to hang

out and have a beverage before their table is ready, and a social area with roof top availability. Hopefully it is just another great amenity in the Van Aken district that people can appreciate. It seems to him that the conditions upon it are reasonable and appropriate to protect the neighborhood, particularly when it comes to issues of noise nuisances and that type of thing. He is confident this will be a nice complement to the area which is already very good.

William M. Ondrey Gruber, Law Director, stated that one of the things that the CPC carefully considered in looking at this, is not only this particular location but the precedent it sets because you are approving something similar to a wine bar but is not a wine bar. It does open the gate a little. However, what is not in the ordinance itself he would like to emphasize is that the CPC looked at a lot of factors and established a factual record that formed the basis of their decision to approve this with the conditions. Those factors not just the conditions of this operation could and would be imposed on any other similar use elsewhere in the City, but also the factors and the factual basis for approving this would also be considered by the CPC in considering a conditional use permit for any other proposed establishment that would asked to be approved as a similar use to a wine bar anywhere else in the City. Therefore, it does not mean that anywhere in the City they could establish and get approval for a conditional use just because this was approved because they would also have to meet the similar fact pattern that the CPC looked at in approving this.

Council member Mr. Williams asked about the operator of the wine bar using the ORA cups.

Director Braverman stated that the wine bar will be a private business and they will serve beverages in glassware. If that business chooses to be part of the ORA, then you could get a beverage in a plastic cup and leave the premises. They may or may not choose to be part of the ORA.

Council member Mr. Roeder asked about access to Sawyer's restaurant from the wine bar.

Director Gruber stated that the only access to the wine bar to Sawyer's restaurant is not open to the public, only to the restaurant staff to deliver meals. The public must access the wine bar from a separate entrance.

It was moved by Mr. Zimmerman, and seconded by Mr. Williams, that the rule requiring ordinances to be read on three different days be suspended and Ordinance No. 19-58 be placed upon its final enactment.

Roll Call:	Ayes:	Mr. Williams, Mr. Zimmerman, Mr. Malone Mrs. Moore, Mr. Roeder, Mrs. Senturia, Ms. Williams
	Nays:	None

Motion Carried

Moved by Mr. Zimmerman, and seconded by Mr. Williams, that Ordinance No. 19-58 be enacted as read.

Roll Call: Ayes: Mr. Williams, Mr. Zimmerman, Mr. Malone  
Mrs. Moore, Mr. Roeder, Mrs. Senturia, Ms. Williams

Nays: None

Ordinance Enacted

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**Ordinance No. 19-43, by Mrs. Moore, enacting new Chapter 516, entitled "Discrimination Prohibitions in Employment and Public Accommodations" to the Business Regulation Code of the Codified Ordinances, in order to establish anti-discrimination ordinances, regulations, procedures, and standards, consistent with county anti-discrimination law in employment and public accommodations.**

William M. Ondrey Gruber, Law Director, stated that on May 13, 2019, Council introduced legislation on first reading to enact a new Chapter 516 of the Business Regulation Code to prohibit discrimination in employment and public accommodations in the City. We previously had no ordinances regulating in any way employment and public accommodations so this is a new form of regulation for the City to prohibit discrimination in the same manner as the county has enacted. We were encouraged by the county's adoption of its ordinance which is in effect and covers Shaker Heights, but for many reasons that have already have been discussed, we are recommending that the City adopt its own ordinance similar to the county. If we get a complaint under public accommodation and employment, the process would be for the City to review it and refer it to the appropriate agency. If it deals with LGBTQ issues, then it may not be covered by federal and state laws and those agencies that deal with those enforcement issues, so we would refer it to the county to handle. Since its introduction on first reading we made a few changes and corrections to the original draft of Chapter 516. Some were described on second reading. The only change made after the second reading was deleting the private right of action originally included. We investigated and researched it and decided that it is in our Fair Housing Ordinance and we are leaving it there. For public accommodations and employment after researching and discussing with our partners who supported this ordinance, we decided not to include such a right at this time. It was not included in the county's ordinance or in Ohio or federal law and could cause a challenge to the City's ordinance that could jeopardize the entire ordinance so we felt it was not appropriate at this time. In the future if it is added to county, state or federal law, then we could revisit that issue.

Moved by Mrs. Moore, and seconded by Ms. Williams, that Ordinance No. 19-43 be enacted as read.

Roll Call: Ayes: Ms. Williams, Mr. Williams, Mr. Zimmerman  
Mr. Malone, Mrs. Moore, Mr. Roeder

Nays: None

Ordinance Enacted

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**Ordinance No. 19-49, by Mrs. Moore, amending Sections 515.01 through 515.05 of Chapter 515, "Fair Housing," in the Business Regulation Code of the Codified Ordinances, in order to update and make the Chapter consistent with the language and protections of new Chapter 516 entitled "Discrimination Prohibitions in Employment and Public Accommodations."**

William M. Ondrey Gruber, Law Director, stated that on May 28, 2019 Council introduced on first reading amendments to the Fair Housing Ordinance Chapter 515 to make it consistent with Chapter 516. We are asking to amend it to ensure consistency with federal, state and county fair housing laws. We did not only look at whether it was consistent with the county's ordinance, but also with federal and state laws as well. There are three areas of amendments. The protected classes being added are for disability in addition to handicap, gender identity and expression even though that is part of the current definition of sexual orientation to be listed as a separate category for protection, and military status. In addition, the definitions are made consistent with Chapter 516. The amendments introduced on May 28, 2019 included age as a protected class, which we have now deleted because it is not in the county, state or federal Fair Housing law. Age was not included as it is already recognized under the exemptions relating to protected class of family of familial status and as there are specific exemptions under age for housing for older persons. Businesses are allowed to discriminate in favor of older persons by establishing housing for persons over 55 or over 62. Another change is that in 1995 we realized that the federal law was amended after the City's Fair Housing Ordinance was enacted. We never went back and updated our own ordinance and the federal government did not raise the issue with us. To make certain that certain kinds of housing including those for 55 and 62 plus are exempted from the familial status provision, those amendments were never added before and now we are adding them. We are also proposing to eliminate the exemption for single family structures and the Mrs. Murphy exemption which are not in the county or state law. They are in the federal law. These are remnants of the early days of Fair Housing when it was difficult to get any law through Congress on Fair Housing so an exemption was made to make it palatable in the 1960s to get it passed, but it was never changed in the federal law. In order to maintain our equivalency status with the federal government and receive grants from the Department of Housing and Urban Development (HUD) we are required to have the federal government review and make sure it is equivalent. We have submitted this to HUD but we have not heard back yet. It would be best to leave this on second reading after assurance from the federal government. The federal government does not have any objection to cities or other equivalent agencies like the Ohio Civil Rights Commission having a law that is tougher than the federal law, so the additions we are making to add LGBTQ protections should not be objectionable because they do not generally object to any protections that are added. They will look to make sure no protections are watered down.

Council member Mr. Williams as Chair of the Fair Housing Review Board, asked if any of the complaints or violations of these provisions occur, would the Fair Housing Review Board or Board of Appeals be the arm of the City that hears these matters.

Director Gruber stated that the Fair Housing Ordinance has its own enforcement provisions. We have been following those. We do our own investigations having equivalent status with HUD. We will continue to do that so we will not refer complaints elsewhere that arise in Shaker Heights. As an administrative matter they would be heard by the City's Fair Housing Review Board and or the parties can take it court directly if they so choose and bypass the Fair Housing Review Board as outlined in the ordinance. Any complaints regarding discrimination as to public accommodations and employment would be referred to the appropriate agency. Our Fair Housing Review Board does not hear those. We do not have a City agency to hear those. They would be referred to a federal or state agency. The City would refer the complaint. We would cooperate to the extent we have any evidence, but we don't have the resources to

investigate them so we would not be investigating as we would not have all the facts. If it is a City resident we could provide a link to the agency so they don't get lost in the shuffle. We could contact an agency on their behalf to make sure they are getting appropriately considered.

Mayor Weiss stated that this item will remain on second reading.

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**Resolution No. 19-50, by Mr. Williams, a resolution reaffirming and expanding the City's Equal Employment Opportunity Policy.**

William M. Ondrey Gruber, Law Director, stated that on May 28, 2019 Council introduced on first reading amendments to the City's longstanding Equal Employment Opportunity Policy, in the form of a resolution to make it consistent with Chapter 516. It was carried over inadvertently from the county ordinance on public accommodations and employment. This is currently on second reading. It adds protection for military status, national origin, and disability instead of handicap, which is the term currently used most widely. It adds age, ancestry, sex and gender expression to the City's employment policy.

It was moved by Mr. Williams, and seconded by Mrs. Moore, that the rule requiring ordinances to be read on three different days be suspended and Resolution No. 19-50 be placed upon its final enactment.

Roll Call:	Ayes:	Mr. Williams, Mr. Zimmerman, Mr. Malone Mrs. Moore, Mr. Roeder, Mrs. Senturia, Ms. Williams
	Nays:	None

Motion Carried

Moved by Mr. Williams, and seconded by Mrs. Moore, that Resolution No. 19-50 be adopted as read.

Roll Call:	Ayes:	Mr. Williams, Mr. Zimmerman, Mr. Malone Mrs. Moore, Mr. Roeder, Mrs. Senturia, Ms. Williams
	Nays:	None

Resolution Adopted

Council member Mrs. Moore thanked Equality Ohio and the Cleveland Stonewall Democrats that have worked alongside us for so long on these issues. She was addressed by a member of the community who asked if we weren't discriminating in employment before and we had all the provisions that we do why we need these changes to our ordinances. She would like to go on the record to say that all of us worked diligently to ensure that everything from our non-bargaining agreements, employee handbook, and our collective bargaining agreements had language protecting our employees from discrimination. We have always had for years our Fair Housing Ordinance and in addition we worked pretty hard watching how the county implemented its human rights ordinance. Sometimes you need to stand up and be counted. You need to not only talk the talk, which we are very good at, but you need to walk the walk. You need to create a law within our community that tells everyone that we will not stand for discrimination in

employment, in housing, or in any type based on sexual orientation or gender identity. Especially today when ordinances throughout the nation are being litigated and challenged we can't ever be sure that the county ordinance will remain, so by going on the books by passing these ordinances we send a message not only to every resident in Shaker Heights that we care about not only who they are and who they love, but we care about every single person who works in our community. Without these laws and the changes the message to everyone is less than full. She is proud to be part of a group here that has always done what needed to be done.

Mayor Weiss echoed Mrs. Moore's comments on behalf of the administration. Council's support and diligence on this and in particular Mrs. Moore as well as others. He would be remiss if he did not comment about the work of Law Director Gruber and Assistant Law Director Lisa Gold-Scott. This is a complicated statutory scheme notwithstanding the theory and thought behind it, which took an extraordinary amount of effort. He wanted to publicly express his appreciation.

\* \* \* \*

**Ordinance No. 19-59, by Ms. Williams, granting a non-exclusive franchise agreement to MCI Metro Access Transmission Corp. dba Verizon Access Transmission ("Verizon") for a period of fifteen (15) years to construct, use, operate, own, modify, manage and maintain a fiber-based data and telecommunications network in the public right-of-way of the City in order to serve business and government customers with the following services: competitive local exchange, voice and data communications, internet access, private line, cell site front-haul and back-haul capacity using fiber optic cable and leasing of conduit and dark fiber to third parties, through both above-ground and below ground facilities, and authorizing the Mayor to enter into a non-exclusive franchise agreement, and declaring an emergency.**

William M. Ondrey Gruber, Law Director, stated that Council has seen these before in the form of either a permit for the right-of-way more often through AT&T who already has a state franchise to be in the right-of-way and to a few other entities that have had a franchise issued by the City in order to install facilities in the right-of-way because they don't yet have a presence in the right-of-way. Verizon is well known to people and provide service in the City but through MCI Metro Access Transmission Corporation they are now proposing to install fiber in portions of the City to serve customers in the City, commercial and government, not residential. They would be required to have a franchise. The process the City follows in all these situations is to have them fill out an application form to verify they are approved by the Public Utilities Commission and they are authorized to operate a utility in the City, the name of the legal parties owning and operating it, who will be installing it, and other parameters of what they are proposing. We propose a franchise agreement. Law has sent that to the company with our standard language, but we have not heard back as to whether they have changes. If Council approves this tonight, it will be as substantially in the form as the franchise agreement distributed with the draft legislation. Due to the requirements of federal and state law which impose a requirement on local governments not to impede telecommunications companies in the provisions of their services the City is required to work cooperatively with such companies to permit their use of the right of way on a non-discriminatory basis and allow the expeditious approval of its installations. Mastec, the company installing the fiber cable on behalf of Verizon has submitted an updated map, has appeared before the Safety and Public Works Committee as well as the internal Major Projects Group, to talk about their proposal. They have been very cooperative so far in working with the City and laying the ground work for this new fiber service. The updated map shows they intend to install fiber to existing polls in the right-of-way, as well as underground using directional boring.

Council member Mrs. Moore stated that this item was reviewed and unanimously supported by the Safety and Public Works Committee.

It was moved by Ms. Williams, and seconded by Mr. Williams, that the rule requiring ordinances to be read on three different days be suspended and Ordinance No. 19-59 be placed upon its final enactment.

Roll Call:	Ayes:	Mr. Williams, Mr. Zimmerman, Mr. Malone Mrs. Moore, Mr. Roeder, Mrs. Senturia, Ms. Williams
	Nays:	None

Motion Carried

Moved by Ms. Williams, and seconded by Mr. Williams, that Ordinance No. 19-59 be enacted as read.

Roll Call:	Ayes:	Mr. Williams, Mr. Zimmerman, Mr. Malone Mrs. Moore, Mr. Roeder, Mrs. Senturia, Ms. Williams
	Nays:	None

Ordinance Enacted

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**Ordinance No. 19-60, by Mr. Roeder, amending Ordinance No. 18-119 an ordinance appropriating funds from the General Capital Fund 0401 to provide for the purchase of equipment for use by the Police Department and appropriating funds from a Transportation for Livable Communities Initiative grant by the Northeast Ohio Areawide Coordinating Agency for improvements at the Warrensville-Shaker intersection, and declaring an emergency.**

Joyce Braverman, Director of Planning, stated that this item is to appropriate funds for the grant that we received from the Northeast Ohio Areawide Coordinating Agency (NOACA) to implement changes to the Warrensville-Shaker intersection. These are mostly pedestrian improvements, reducing the number of legs coming into westbound and eastbound Shaker at Warrensville, to tighten the curb radii, removing unneeded turn lanes, adding pedestrian refuge islands, and new crosswalk signals. Council authorized the City to apply for this \$200,000 grant in September 2018 and we were successful. Now that we have the grant we need to appropriate the money, which would add to \$173,000 that was included in the capital budget for 2019. This item is requested as an emergency and with a suspension of the rules so that we can begin design and construction.

Robert H. Baker, Finance Director, stated that the Police equipment appropriation included the Warrensville-Shaker appropriation, so it is being amended to increase the appropriation for this project by \$200,000.

Director Baker responded to a question from Council member Mr. Williams asked about issuing debt, and stated that we have sufficient funds in our capital appropriations to do the expenditure and we will be reimbursed.

Council member Mr. Roeder asked about the design as part of an engineering process.

Director Braverman stated the request for proposals is out for engineering services which includes two public meetings: one prior to any design going on paper and one when 30 to 40% of the design is done. There are neighbors who are very interested in this improvement. The construction will be most likely in 2020. We will design over fall and winter and vet it well, with spring construction.

Mayor Weiss stated that he gave his word that we would adequately notify those particular residents that have expressed an interest to date. In general people are thrilled that we have a grant and that we are able to start this project.

It was moved by Mr. Roeder, and seconded by Ms. Williams, that the rule requiring ordinances to be read on three different days be suspended and Ordinance No. 19-60 be placed upon its final enactment.

Roll Call:	Ayes:	Mr. Williams, Mr. Zimmerman, Mr. Malone Mrs. Moore, Mr. Roeder, Mrs. Senturia, Ms. Williams
	Nays:	None

Motion Carried

Moved by Mr. Roeder, and seconded by Ms. Williams, that Ordinance No. 19-60 be enacted as read.

Roll Call:	Ayes:	Ms. Williams, Mr. Williams, Mr. Zimmerman Mr. Malone, Mrs. Moore, Mr. Roeder
	Nays:	None

Ordinance Enacted

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**Ordinance No. 19-61, by Mrs. Moore, enacting new Section 141.07 of the Administrative Code of the City's Codified Ordinances to allow Police Officers to purchase retiring Police Dogs for \$1.00, and declaring an emergency.**

Police Commander John Cole stated that this ordinance effectively closes the circle for K-9 handlers. It gives them the opportunity to purchase their dogs at retirement or if the dog otherwise becomes unfit for duty for \$1. Before this, when the dog retired it would go back to the handler who would incur all the veterinary expenses of the upkeep but the City would maintain the liability. This puts the liability on the handler who wants that and the animal. Also, the animal is already acclimated to their family.

William M. Ondrey Gruber, Law Director, stated that this is modeled after the state law which does not apply to the City. This is a common practice done elsewhere.



important thing is that the administration and Council reduced expenditures when necessary not because of a resolution that required it but because that was necessary. When the income tax increase was passed in 2012, starting in 2013 our cash balance was over 20%. His recommendation is that we can safely increase the target to 25%. We also need to amend the General Capital provision and take out the estate tax and provide that we should have enough money in our fund for the appropriations for the coming year to pay for all the projects that we authorized. We should not appropriate more projects than we have money. The current policy says you can transfer money from the reserves to the General Capital Fund to the Sewer Capital Fund, Streets, and to the Economic Development Fund. The revised policy says all or any portion of an excess above 25% can be transferred to the General Capital Fund, Sewer Capital Fund, or any other fund authorized by Council. Members of the Finance and Administration Committee felt there should be a reference to the bond rating agency because all of this is part of the bond rating agency's review of the City of Shaker Heights. He has added a provision that says we will consider maintaining our favorable ratings with the rating agencies. Our financial consultant reviewed the language and felt it was helpful. This item is requested with a suspension of the rules.

Council member Mrs. Moore asked about the threshold for standard rating agencies consider acceptable for the reserve.

Director Baker stated that in Ohio to have a AAA rating, you must have a reserve of over 20%, but Shaker Heights has a AAA rating with one of the two rating agencies and AA+ with the other agency, but the standard there is a reserve fund of 86%. His experience with the rating agencies are that they want cities to have a policy, what it is, and look at what you have done with the policy. If you are below 20% and took positive steps to deal with the problem, that was what they wanted to see.

Mayor Weiss stated that metrics from the Government Finance Officers Association has a minimum of two months of expenses. That is roughly 17%. The median general fund yearend balance for AA rated municipalities across the country was 35%. If you ask different financial advisors you will get different answers. He feels 25% is certainly not excessive.

Council member Mr. Malone stated that he is personally in favor of this but he would respect and defer to other's wishes on whether to pass this tonight. His view is that the 25% target is somewhat arbitrary, but it does give a nod in favor of fiscal restraint, but it does not bind us in any way. Everyone agreed at the Finance and Administration Committee agreed that a general policy makes more sense than a mandate. If we are at 20% because we need to spend more, there is no problem with that. He thinks this is really a symbolic gesture directed at the rating agencies. We are telling them we are inclined to try as a goal to have some fiscal restraint and build up a reserve when we can, it bodes well for our ability to maintain our AAA rating and hopefully be able to use that rating to get favorable rates when we borrow.

Mayor Weiss stated that we started this process early enough to make sure we have something in place and to correct errors like the estate tax reference by the time we work on the budget for next year. We also wanted to do this as a first step and then look at some of the other issues like the 27<sup>th</sup> pay which is worthy of further discussion and analysis.

Council member Mrs. Senturia stated that she really appreciates all the effort that has gone into this, but not sure what the language about the bond rating agency is necessary.

Council member Mr. Malone stated that arguably that reference is subsumed within some of the general whereas language above where it talks about the goal is to establish and maintain effective management

of the City's financial resources. One of the members of the Finance and Administration Committee asked for a specific reference to maintain a favorable bond rating and so they asked Director Baker to add it.

Mayor Weiss stated that he is not sure this makes or breaks it. If they want to change it and include it in a whereas clause he would not object.

Council member Mrs. Moore stated that years ago when we were going for a rating we had a team of people arguing for not downgrading because of that. Indeed one of them did and it was explained that the percentage of general fund cash reserve was a critical part of the credit rating.

Council member Mrs. Senturia stated that we have discussed how fickle the agencies are, and how you can get a different answer from each agency. Some of it depends if you fit the guidelines at the moment. The balance is one issue, but we could have 100% reserve and still be downgraded for other reasons. The overall financial package makes our City attractive with a long history of relative fiscal conservatism. She feels this language does not fit in Section 1, but she could live with it in a whereas clause if someone feels the need to say it. She questions how we would interpret that language as a policy. It is one of many criteria and we could make the balance 50% or 80% and still be downgraded for other reasons.

Mayor Weiss stated that we could leave this item on first reading and Council can take more time to look at it and make a judgment if you are so inclined or not, or we can move forward tonight.

It was moved by Mr. Malone, and seconded by Mrs. Moore, that the rule requiring ordinances to be read on three different days be suspended and Ordinance No. 19-62 be placed upon its final enactment.

Roll Call:	Ayes:	Mr. Williams, Mr. Zimmerman, Mr. Malone Mrs. Moore, Mr. Roeder, Mrs. Senturia, Ms. Williams
	Nays:	None

Motion Carried

Moved by Mr. Malone, and seconded by Mrs. Moore, that Ordinance No. 19-62 be enacted as read.

Roll Call:	Ayes:	Mr. Williams, Mr. Zimmerman, Mr. Malone Mrs. Moore, Mr. Roeder, Ms. Williams
	Nays:	Mrs. Senturia

Ordinance Enacted

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The Mayor invited members of the audience to comment on any issues.

No comments were offered.

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There being no further business before Council, the Mayor adjourned the meeting at 10:04 p.m.

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DAVID E. WEISS, Mayor

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JERI E. CHAIKIN, Clerk of Council