



SHAKER HEIGHTS

City Council Agenda City Hall Council Chambers Monday, February 11, 2019 at 6:00 pm

6:00 p.m. EXECUTIVE SESSION - Conference Room B

To discuss the purchase, sale or the development of real property where premature disclosure of information would give an unfair competitive or bargaining advantage to a person, or otherwise adversely affect the general public.

7:00 p.m. WORK SESSION - Council Chambers

1. Dominion East Ohio Construction Projects in Shaker Heights
 - Kyle Miller, Director of External Affairs, Dominion East Ohio
 - Mike Antonius, Manager, Gas Design, Dominion East Ohio
2. Proposed Policy and Ordinance Changes Related to the Regulation of "Hot Works"
 - William Ondrey Gruber, Law Director
 - Fire Chief Patrick Sweeney
 - Paul Konys, Building Commissioner

SPECIAL MEETING

Public Comment on Agenda Items

1. Amending existing or enacting new Sections 547.01 through 547.08 of the Business Regulation Code, amending Sections 901.02, 901.04, 901.07 and 901.08 of the Fire Code, and amending Section 1303.01 of the Building Code, of the Shaker Heights Codified Ordinances, relative to the licensing of contractors, and the regulation of Hot Work by contractors under the Fire and Building Codes of the City.

Documents:

[HOT WORKS.PDF](#)

2. Amending Sections 115.05, 115.06, and 115.07 of the Administrative Code of the Shaker Heights Codified Ordinances relative to public notification of meetings of public bodies.

Documents:

[OPEN MTGS.PDF](#)

To request an accommodation for a person with a disability, call the City's ADA Coordinator at 216-491-1440, or Ohio Relay Service at 711 for TTY users.



SHAKER HEIGHTS

MEMORANDUM

TO: City Council

FROM: William M. Ondrey Gruber, Director of Law

CC: Mayor David E. Weiss
Jeri E. Chaikin, Chief Administrative Officer

DATE: February 6, 2019

RE: **Amendments to the Building, Fire and Contractor Registration Ordinances to Improve Contractor Regulation, Fire Protection and the Regulation of Hot Work**

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As a result of the Fernway School fire last year, Mayor Weiss asked various City Departments to look at the City’s policies and ordinances to determine if improvements in regulation and procedure could be instituted to address concerns raised by that fire regarding the regulation of contractors, and in particular roofing contractors, and hot work performed by roofers and other contractors.

Fernway Fire:

On July 10, 2018 a major fire occurred starting on the roof at Fernway Elementary School. The School District had contracted for routine summertime maintenance and repairs to the building’s roof.

On September 13, 2018, the Fire Department issued the results of its investigation in its report entitled: *“The Origin and Cause Fire Investigation Report.”* The Department’s Fire Investigation Unit (FIU) conducted the investigation according to the guidelines established by the National Fire Protection Association (NFPA), which writes standards for the safety industry, and which standards have been adopted by the State of Ohio.

The Report states that: “Fire patterns indicated that the fire originated in an area at the right wall of the left wing of the school where the middle flat roof was located...and was contained to the attic/hip and valley roof covering the three wings of the school.” Roofing contractors were doing “hot work” in this area, which, in this case, involves the use of torches in the application of asphalt roofing materials.

The Report concluded that the cause was accidental. Safety industry standards require that the cause of the fire be designated as accidental, natural, incendiary, or undetermined. The Report states that the “first material ignited was the wood board that separated the roof from the masonry wall.” Through a process of elimination of all possible sources including outlets, receptacles, extension cord, power tools and heating cables, it was determined that the ignition source was from either a worker using a torch in which direct flame contact from the torch ignited the wood, or a product failure with the tools and/or materials being used.

A small fire also occurred on the roof on July 9th at a different location than where the fire on July 10th originated. The report of a fire on July 9 was thoroughly investigated by the Fire Department the same day using a thermal heat imager and visual inspection of the entire roof and attic and observed “no

signs of heat, flame, or smoke” nor “odor of smoke in the attic.” Based on these facts, the SHFD was confident that there was no evidence that these two fires were related. The Fire Inspector followed up with an onsite visit the morning of July 10. At that time, SHFD verified that the roofer had two fully charged fire extinguishers on the roof. One extinguisher is required.

Hot Work:

“Hot Work” is any process involving flame, spark, or heat production, including cutting and burning, welding, soldering, heat treating, grinding or chipping, drilling or tapping, and torch-applied roofing. While the Ohio Fire Code regulates all Hot Work in theory, from the research conducted by the Fire Department, the regulation by permitting and inspection of Hot Work is not found in most jurisdictions in Ohio, and around the country, with some exceptions.

Attached to this memorandum is a Hot Work information sheet from the National Fire Protection Association (NFPA).

Since 2007, there have been two fires associated with work performed on or near a roof in the City. One was on Lansmere and involved roofers using torches. The other was on Park Boulevard and involved workers welding copper gutters.

Over the past 10 years, the City issued 30,000 Building permits, and has recorded 9 fires resulting from Hot Work.

Policy and Ordinance Review:

The Fire, Building and Law Departments have met for several months, which have resulted in a number of recommendations for policy and ordinance changes. Our goals have been to maximize the protection of people and property in the City, and to ensure the appropriate level of regulation of contractors, keeping in mind the need to maintain the availability of a wide variety of affordable contractors for residents and businesses in the City.

The focus of the City’s analysis of our policies, procedures and ordinances has been the use of Hot Work, which was implicated as the likely cause of the Fernway fire. We have focused on the Hot Work with the use of welding, cutting and/or roof torches. These uses are statistically the cause of 58% of fires and 85% of civilian deaths occurring from Hot Work each year across the U.S.

We do not recommend that the City prohibit hot work in the City. This would hinder a great deal of contractor work, and potentially increase costs for residents and businesses, without any significant improvement in public safety. Hot Work activity is ubiquitous and has not resulted in a large number of fires.

Instead, we recommend:

1. Requiring contractor training for Hot Work involving the use of welding, torch cutting and/or roof torches.
2. Requiring Hot Work permits for these activities, as well as inspections and formal Fire Watches as directed by the Fire Chief.
3. Encouraging contractor education and training regarding Hot Work when performed by plumbers, electricians, and other contractors using the method for soldering, heat treating, burners, etc. (i.e. other than for welding, cutting and roofing).
4. Requiring training and education on Hot Work for all City firefighters and Building inspectors, and for certain other inspectors and City personnel in the Public Works and Recreation Departments who conduct maintenance work and/or oversee contractors in

doing tasks that may involve Hot Work of some sort. The Board of Education will be invited to participate in such training and education.

5. Providing public education and information about Hot Work, including about how it is commonly used by various contractors, and what questions residents, businesses, and institutions should ask contractors about the use of hot work, and what training the contractor and its employees have undergone, and what safety precautions the contractor employs. Simplified online training exercises will be provided by links for contractors and homeowners for safe use of tools that can create fire hazards.

In addition, we are asking Council to enact amendments to the City's Contractor Registration ordinances, Fire Code, and Building Code, as set forth in the legislation attached to this Memorandum, in order to accomplish the following:

CONTRACTOR REGISTRATION – CHAPTER 547

- Change to a Contractor "License"
- Hot Work:
 - Define "Hot Work" as having the same definition as in the City's Fire Code;
 - Require a Contractor doing Hot Work to have a City issued License.
- Clarify that a Contractor includes subcontractors, which must also be Licensed.
- Clarify that Contractors performing work regulated by the Ohio Construction Industry Licensing Board must show proof of licensure by that board in order to obtain a City License.
- Update the insurance requirements:
 - Current: \$100,000 per person, \$300,000 per occurrence, \$50,000 property damage;
 - New: \$500,000 per person, \$1 million per occurrence, \$50,000 property and fire damage.
- Fee – no change (\$125)
- Add Temporary License Fee for \$100 (explained below)
- Create an enforcement procedure including:
 - Issuance of a Notice of Violations for Contractors working in Shaker without a Contractor's License.
 - Issuance of a Notice of Denial or Revocation of License:
 - if any false statement is made by the applicant,
 - if the Contractor fails to comply with the City Codes, or
 - as part of the sentencing phase of a criminal conviction related to code enforcement.
 - The Notice will order the suspension of work in the City
 - Contractor may appeal a Notice of Violation, Denial or Revocation to the City's Board of Building Code Appeals (i.e. the Architectural Board of Review [ABR]).
 - During appeal the Contractor may apply for a Temporary License to continue to operate
 - Contractor may request to continue working to complete any pending projects
 - The City's Building Commissioner shall grant request if the customer wants the Contractor to complete the work, and if the work can be completed safely and correctly.
 - Contractor shall obtain a Temporary License
 - Contractor may submit a new application when:
 - Suspension Period has expired
 - Contractor has corrected any violations of the ordinances, and
 - Contractor has paid fee
 - \$200 – 1st offense
 - \$300 – 2nd offense
 - \$500 – 3rd or more offenses.

FIRE CODE – Title 9

- Define Hot Work the same as under NFPA Rule 51B—but ONLY when a person is using a welding, cutting and/or roof torch
- Require a Hot Work permit – with proof of training

- Fee for Hot Work - \$25 (same as current)

BUILDING CODE

- Provide that no building permit shall be issued for Hot Work, until a copy of the Hot Work Permit issued by the Fire Department has been provided to Building. Any work performed without a Hot Work permit when it is required by the Fire Code shall be considered a violation of the Building Code.

The Safety and Public Works Committee unanimously agreed to recommend that Council adopt the changes to the City's ordinances described above at its meeting on February 1, 2019.

Council is asked to amend the City's ordinances as recommended in this Memorandum and as specifically set forth in the attached legislation.

Attachment
councilmemos/0206-amendbldg-fire-contractor-hotwork-CODORD-COUNCIL

HOT WORK FIRE SAFETY

WHAT IS IT?

Hot work is any process involving flame, spark, or heat production. Typically, this includes: cutting and burning, welding, soldering, heat treating, grinding or chipping, drilling or tapping, and torch-applied roofing.

NFPA 51B covers hot work safety. Take a look: www.nfpa.org/51B

WHO NEEDS TO KNOW?

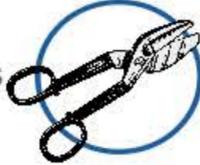
Construction Contractors



Welders



Sheet-Metal Workers



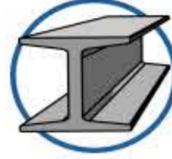
Plumbers



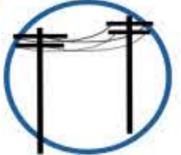
Pipe-Fitters



Iron Workers



Utility Workers



Electrical Workers



Roofers



AHJ's / Fire Service



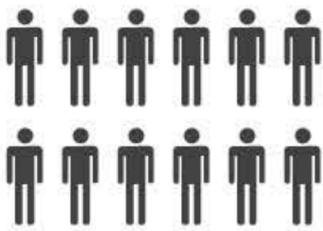
WHY IS IT IMPORTANT?

4,440

Structure Fires Involve Hot Work Per Year

42%

Of Fires Occur In or On Homes



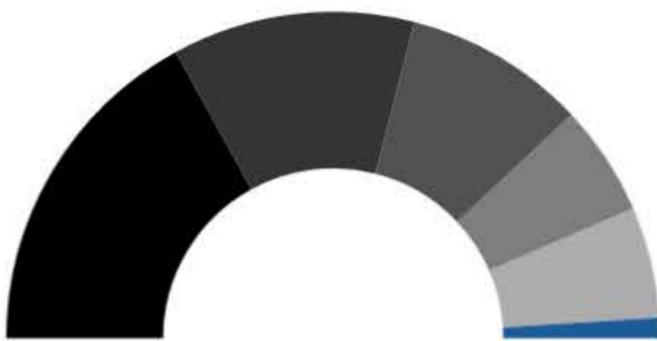
12 Civilian deaths are caused per year from these fires



208 Civilian injuries are caused per year from these fires



\$287M In direct property damage results from these fires per year.



Welding Torches (34%)
 Cutting Torches (24%)
 Soldering Equipment (18%)
 Burners (11%)
 Heat Treating Equipment (11%)
 Other (2%)

| | Home Fires | Non-Home Incidents |
|---------------|--|---|
| Peak Areas | Wall assemblies, Concealed spaces, Bathrooms | Exterior roof surfaces, Processing/manufacturing areas |
| First Ignited | Structural members, Framing, Insulation | Flammable/combustible liquids, gases, and Exterior roof coverings or finish |

From the Structure Fires Caused by Hot Work NFPA Report. www.nfpa.org/hotworkreport



NATIONAL FIRE PROTECTION ASSOCIATION

The leading information and knowledge resource on fire, electrical and related hazards

ORDINANCE NO.

BY:

Amending existing or enacting new Sections 547.01 through 547.08 of the Business Regulation Code, amending Sections 901.02, 901.04, 901.07 and 901.08 of the Fire Code, and amending Section 1303.01 of the Building Code, of the Shaker Heights Codified Ordinances, relative to the licensing of contractors, and the regulation of Hot Work by contractors under the Fire and Building Codes of the City.

WHEREAS, Sections 547.01, 547.05 and 547.06 of the Business Regulation Code (Part 5) were enacted in Ordinance 91-84, on August 26, 1991; and

WHEREAS, Sections 547.02 and 547.04 of the Business Regulation Code (Part 5) were most recently enacted in Ordinance 13-114, on December 16, 2013; and

WHEREAS, Section 547.03 of the Business Regulation Code (Part 5) was most recently enacted in Ordinance 16-67, on June 27, 2016; and

WHEREAS, Sections 901.02, 901.04, 901.07 and 901.08 of the Fire Code (Part 9) were most recently enacted in Ordinance 10-11, on February 22, 2010; and

WHEREAS, Section 1303.01 of the Building Code (Part 13) was most recently enacted in Ordinance 06-53, on May 22, 2006; and

WHEREAS, this Council has determined to update and strengthen the City's Contractor Registration requirements, and to amend the Fire and Building Codes to better regulate hot work performed by contractors in the City, in order to maximize the protection of people and property in the City, and to ensure the appropriate level of regulation of contractors.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Shaker Heights, State of Ohio:

Section 1. Sections 547.01, 547.02, 547.03, 547.04, 547.05, and 547.06 of the Business Regulation Code, Sections 901.02, 901.04, 901.07 and 901.08 of the Fire Code, and Section 1303.01 of the Building Code, of the Codified Ordinances of the City of Shaker Heights, as heretofore in effect, are hereby repealed.

Section 2. Sections 547.01, 547.02, 547.03, 547.04, 547.05, 547.06, 547.07 and 547.08 of the Business Regulation Code of the Codified Ordinances of the City of Shaker Heights are hereby enacted as amended and/or re-numbered as follows:

CHAPTER 547. ~~REGISTRATION OF CONTRACTORS~~ LICENSE.

547.01 DEFINITIONS.

For the purpose of this chapter, words and phrases shall have the following meanings:

- (a) "Contractor" means any person or entity who contracts with a purchasing person or entity who purchases the services of the contractor to perform any work which requires a Building or Fire permit. Contractor shall include a subcontractor of a Contractor. The person or entity purchasing may be the owner, occupant or

resident agent of the premises or another contractor. The term "contractor" excludes a person who is an employee of the purchasing person or entity. The term "contractor" excludes interior painters and other persons (such as handymen) who do no work which requires a permit. The phrase "work which requires a permit" includes, but is not limited to, the following: building, plumbing, electrical, heating, ventilating, air conditioning, sheet metal, piping, sewer, signs, refrigeration, cement, asphalt, masonry, excavating, carpentry, drywall, roofing, structural steel, siding application, glazing, tree maintenance, tree removal, paint removal, window installation, ~~or~~ sprinkler installation, or Hot Work. In addition, "contractor" includes exterior painters and landscapers, regardless of whether or not their work requires a permit.

- (b) "General Contractor" means a Contractor who contracts with the owner, occupant or resident agent of the premises.
- (c) "Hot Work" shall have the definition as set forth in the City's Fire Code. operations including cutting, welding, Thermit welding, brazing, soldering, grinding, thermal spraying, thawing pipe, installation of torch applied roof systems or any other similar activities producing a spark, flame or heat
- (d) "Subcontractor" means a Contractor who contracts with a General Contractor or other Subcontractor, but who does not contract directly with the owner, occupant or resident agent. Subcontractors are considered a "Contractor" for the purposes of this Chapter.

547.02 REGISTRATION LICENSE.

No Contractor, as defined in this Chapter, including a General Contractor and any Subcontractor, ~~shall~~ perform any work within the City without a current Certificate of Contractor Registration License from the Commissioner of Building.

547.03 REQUIREMENTS FOR LICENSE CERTIFICATION.

(a) An application for a Certificate of Contractor Registration License shall be filed each year with the Commissioner of Building. An application may be filed no sooner than November December 1 of the year preceding the period of the License time of registration.

(b) The application shall include the following:

- (1) An application form requiring:
 - A. The name, address, business and home telephone numbers, and social security number or federal employer identification number of the applicant;
 - B. The name, address and social security number of each employee and subcontractor of the applicant who are currently working on any site in the City;
 - C. The name, address and social security number of each employee and subcontractor of the applicant who worked on any site in the City during the calendar year preceding the License year of registration, provided that, in the case of an applicant which files its application prior to January 31 of the License year of registration, the Commissioner of Building may issue a Certificate of Registration Contractor License on condition that the applicant submits this information no later than January 31 and if the information is not so submitted, the Commissioner may suspend the conditional Certificate of Registration Contractor

License until such time as the information is submitted, upon giving written notice to the contractor as provided in Section 547.04(b);

- D. A list of current licenses held by the applicant from the Ohio Construction Industry Licensing Board~~governmental entities within Cuyahoga County or contiguous counties~~, with certified copies of the licenses attached ~~(for electrical, plumbing, and sewer, HVAC and refrigeration contractors, the Commissioner of Building shall require that the applicant has a license from a governmental agency in Cuyahoga County or contiguous counties which has given a competent qualifying examination);~~
- E. A list of the names, addresses and telephone numbers of municipalities within Cuyahoga County or contiguous counties where the applicant has done work;
- F. If the applicant is a business entity, domestic or foreign, using a name other than an individual's own personal name, the applicant shall provide proof that it is registered with the Ohio Secretary of State, as required under Title XVII of the Ohio Revised Code.
- G. If the applicant intends to perform any Hot Work, as defined in this Chapter, the applicant shall disclose such intention in writing at the time of License application, and shall provide proof that the person or persons involved in such work have had Hot Work training, as required in the Fire Prevention Code (Part 9), Chapter 9, d by the Commissione within three (3) years of the date of the issuance of the License.

- (2) A certificate of insurance naming the City and its agents as additional insured parties on a policy of insurance in the minimum amounts of fiveone hundred thousand dollars (\$~~5~~100,000) per person and one millionthree hundred thousand dollars (\$~~1,0~~300,000) per occurrence for bodily injury, two million dollars (\$2,000,000) aggregate, and fifty thousand dollars (\$50,000) per occurrence for property and fire damage.

(c) The Certificate of Contractor License Registration shall be issued by the Commissioner upon the Contractor complying with all requirements of this Chapter, and every Contractor License shall expire on the 31st day of December of each year, if it was issued prior to November 1 of the current year.

547.04 LICENSE FEES; TEMPORARY LICENSE, EXPIRATIONS AND REVOCATION.

(a) The Commissioner of Building or the Commissioner's designee shall issue the annual Contractor License upon submission of a complete application and the payment deposit of a fee of \$125.00.~~the following fee:~~

| | <u>Fee</u> |
|---|---------------------|
| General contractor, each subtrade in direct employment of the general contractor, subcontractor, landscaper, tree maintenance service, or tree removal service | \$125.00 |

The Commissioner of Building shall waive the fee for a contractor that~~who~~ does work only for the City.

(b) A Contractor may apply for a Temporary License in the circumstances described in this Chapter, upon submission of a complete application and the payment of a fee of \$100.00. A Temporary License shall

~~be valid only for the limited period stated in such License. Where a contractor who is required by this Chapter to be registered performs work without registering as required by this Chapter, whether the work has been completed or not, the contractor shall be required to register and pay a fee after a first offense of \$200.00, and after a second offense a fee of \$300.00. Payment of the fee set forth in this Section shall not relieve a contractor from fully complying with the requirements of this Chapter, the Building Code or any other State law or City ordinance. The City may pursue any other legal remedy against a contractor which the City is authorized to seek whether a contractor has registered and paid the penalty fee under this Section or not.~~

547.05 FAILURE TO OBTAIN LICENSE; DENIAL OR REVOCATION OF A LICENSE.

~~(a) The Commissioner of Building may issue a Notice of Violation if he or she finds that a Contractor, as defined in this Chapter, is performing or has performed work without a Contractor License, or the Commissioner may deny an application for or revoke a Contractor License if any false statement is made by the applicant in connection with the issuance of such License, if the Contractor has failed or fails to comply with any applicable provisions of the Housing, Fire, Health, Zoning, or Building Codes, or as part of the sentencing phase of a criminal conviction related to code enforcement.~~

~~(b) If the Commissioner issues a Notice of Violation under this Section, or denies or revokes a Contractor License, the Commissioner shall serve the Notice of Violation, or a Notice of Denial or Revocation, as applicable, which Notice shall be delivered by hand delivery, or by regular or certified mail. The Notice shall order the suspension of any work being performed by the Contractor, and state a period of time after which the Contractor may apply or reapply for a License (the "Suspension Period"), which Suspension Period shall be reasonably related to the seriousness of the violations of the City's Codes and/or whether the Contractor has had repeated violations of such Codes.~~

~~(c) The Contractor may appeal a Notice of Violation, Denial or Revocation pursuant to Section 547.07.~~

~~(d) During the pendency of an appeal before the City, a Contractor may apply for a Temporary License under Section 547.04 (b) in order to continue to operate in the City until the Contractor has been issued a written appeal decision by the City. In addition, -when a Contractor has been issued a Notice that suspends all work in the City by that Contractor and the Contractor does not appeal, the Contractor may request that it be permitted to continue working in the City to complete any pending projects for which it has a signed contract or purchase order from the customer entered into prior to the date of the issuance of the Notice containing the order of suspension. The Commissioner shall grant such a request if the customer wants the Contractor to complete the work, after having been notified of the violation, denial or revocation in writing by the Contractor, and if the Commissioner has determined, in his or her reasonable discretion, that the work can be completed safely and correctly. If the Commissioner grants such a request, the Contractor shall obtain a Temporary License, which shall be valid only until the specific work identified in the request has been completed. The Commissioner may require additional inspections to ensure that the work is performed in a safe and Code compliant manner, and may require the payment of fees for such inspections.~~

~~(e) If a Contractor has been issued a Notice of Violation, Denial or Revocation under this Section, the Contractor may submit a new application and the Commissioner shall issue or reinstate the Contractor License that has been revoked, when any of the following has occurred:~~

~~(1) The Contractor's appeal has been upheld by the City or any~~

court, or

(2) The Contractor's appeal has been denied by the City or any court, or the Contractor has not filed an appeal, and all of the following have occurred:

A. The Suspension Period stated in the Notice of Violation, Denial or Revocation has expired;

B. The Contractor has submitted a new application for a License, complied with all requirements to obtain a License, and paid an application fee as follows:

(i) \$200, if the Notice of Violation, Denial or Revocation was the first issued to the Contractor;

(ii) \$300, if the Notice of Violation, Denial or Revocation was the second such Notice issued to the Contractor.

(iii) \$500, if the Notice of Violation, Denial or Revocation was the third or more such Notice issued to the Contractor.

(3) The Contractor has corrected any violations of law that were the cause of a denial or revocation.

(4) Any criminal or civil proceedings brought by the City against the Contractor or any principal of the Contractor have been completed.

(f) Any entity that is owned by one or more of the same persons or entities that own an entity that is a Contractor as defined in this Chapter, that has been issued a Notice of Violation, Denial or Revocation, shall be subject to the same Notice, including a Suspension Order, and shall be subject to all of the provisions of this Section.

~~(e) If the Commissioner of Building or the Commissioner's designee finds that a contractor has failed to register or to submit a complete application, has submitted an application containing false information, or has been notified of a violation of a section of the Building Code, Zoning Code or Housing Code, notice in writing shall be delivered by hand, certified mail or ordinary mail to the contractor or the contractor's agent. The notice shall state the grounds upon which the findings in the previous sentence are based. The notice shall specify a reasonable period of time within which to remedy the findings. If the contractor fails to remedy the findings, the Commissioner of Building shall proceed with a stop order and take such enforcement action as the Commissioner determines is necessary, which may include revocation of the Certificate of Contractor Registration pursuant to the procedures set forth in Section 1301.08 of the Codified Ordinances and subject to the appeal procedure set forth in Chapter 1311 of the Codified Ordinances.~~

~~(d) The Certificate of Contractor Registration shall expire on the 31st day of December of each year.~~

547.065 EXCEPTIONS.

~~(a) This Chapter shall not apply to a homeowner who assumes the responsibility as his/her own general contractor, provided:~~

~~(a) (1) Each subcontractor of the homeowner shall obtain a license be registered in accordance with the above sections;~~

~~(b) (2) The homeowner shall submit an affidavit to the Commissioner of Building outlining which subcontractor shall be performing each phase of the construction;~~

~~(c) (3) All work shall comply with the applicable Building, Housing and Fire Codes, ordinances, rules, and regulations, and shall be inspected prior to being concealed or completed.~~

547.07~~6~~ APPEAL.

~~The appeal provision of Building Code Chapter 1311 shall apply. A Contractor that has been issued a Notice of Violation, Denial or Revocation under this Chapter, or has had a request to continue operation in the City denied, may file an appeal with the City's Board of Building Code Appeals pursuant to Chapter 1311 of the Building Code.~~

547.08 ENFORCEMENT AND PENALTIES.—

~~(a) A Contractor that violates any provision of this Chapter shall 7 for each violation or noncompliance, be deemed strictly criminally liable and guilty of a misdemeanor of the first degree, and penalized as set forth in Section 101.99 of the Administrative Code of the Codified Ordinances. Each day of violation or failure to comply shall constitute a separate offense.~~

~~(b) In addition to or in lieu of a prosecution for a violation of this Chapter, the City may also seek an order or injunction in a court of law requiring a Contractor, and/or the owner, operator, employees, agent or subcontractor of the Contractor, to comply with the provisions of the Code, or with any Notice or Order served pursuant to this Chapter. Such action may also seek an order to prevent the operation of the Contractor in the City.~~

Section 3. Sections 901.02, 901.04, 901.07 and 901.08 of the Fire Code of the Codified Ordinances of the City of Shaker Heights are hereby enacted as amended as follows:

901.02 DEFINITIONS.

As used in the Fire Prevention Code and the regulations incorporated herein, certain terms are defined as follows:

(a) "Approved" when applied to materials, types of construction, appliances, procedures, transportation, or occupancy, means approved by the Fire Chief or the City Bureau of Fire Prevention as a result of investigations and tests conducted, or by reason of accepted principles, research reports and tests made or approved by the American Society for Testing and Materials, the National Fire Protection Association, International Code Council, and any other authoritative sources specified in Appendix O of the Ohio Building Code and in OAC Section 1301:7-5-01.

(b) "Historic building" means an individual building designated as a historic landmark or a building in a designated historic district under Federal, State or City law.

~~(c) "Hot Work" for permitting and licensing purposes only under these Codified Ordinances shall mean the same as defined by the National Fire Protection Association in rule NFPA 51B, when a person is using a welding, cutting and/or roof torch. This definition shall not limit enforcement by the Fire Department of any standards under this or the State Fire Code regarding Hot Work as defined in NFPA 51B.~~

~~(d) "Premises" means any lot, parcel, or plot of land, whether vacant or occupied by any buildings or structures, and including the exterior and interior of any buildings or structures thereon.~~

~~(ed) "Property" shall include either real or personal property, and shall include any premises.~~

~~(fe) "Rubbish" means any paper, boxes, bottles, cans, articles of apparel, and all other forms of discarded material.~~

901.04 BUREAU OF FIRE PREVENTION.

(a) Creation and Composition. A Bureau of Fire Prevention in the Fire Department of the City is hereby established, which shall be operated under supervision of the Chief of the Fire Department, under the direction and control of the Director of Safety. The person in charge of the Bureau of Fire

Prevention shall be referred to and known as "Chief of the Bureau of Fire Prevention" and shall be appointed on the basis of the person's qualifications by the Chief of the Fire Department with the approval of the Director of Safety. The Fire Chief shall designate such other officers and members of the Fire Department, as the Chief deems necessary, as fire inspectors for duties incident to the operation of the Bureau.

(b) Specific Powers and Duties. It shall be the duty of the Bureau of Fire Prevention to enforce all laws and ordinances covering the following:

- (1) The prevention of fires;
- (2) The storage and use of explosives and flammables;
- (3) The installation and maintenance of automatic and other private fire alarm systems, and fire extinguishing equipment;
- (4) The maintenance and regulation of fire escapes;
- (5) The maintenance of protection and the elimination of hazards in buildings and structures, including those under construction;
- (6) The means and adequacy of exit in case of fire from all places in which persons work, live, or congregate for any purpose or length of time including but not limited to all buildings or structures regulated by the Ohio Building Code as specified in Ohio R.C. 3781.06.
- (7) The investigation of the cause, origin and circumstances of

fires.

(c) General Powers and Duties. The Fire Prevention Bureau shall perform inspections and take such enforcement actions relating to the provisions of the Fire Prevention Code as deemed necessary by the Fire Chief or the Chief's agent. The Bureau shall have such other powers and perform such other duties as are set forth in other sections of this Fire Prevention Code and other ordinances, and as may be conferred and imposed from time to time by the Mayor or City Council, or by State law or regulation.

(d) Right of Entry and Inspection. The Fire Chief, Chief of the Bureau of Fire Prevention, or any inspector or assistant inspector of the Bureau may, at any reasonable hour, enter any building, premises, or vehicle within the City to perform any duty imposed on him by this Fire Prevention Code, or by the Ohio Revised Code or Ohio Fire Code, provided permission to enter is obtained from the occupant or, in the case of unoccupied property, from the owner or the owner's agent. If such permission is refused or otherwise unobtainable, a search warrant shall be obtained before such entry or inspection is made, except in the case of an emergency in which case entry may be made at any time and no search warrant is necessary. No person shall refuse to permit such emergency entry or inspection, nor shall any person hinder, obstruct, resist, or abuse any person making or attempting to make such entry or inspection.

(e) Fire Detection and Extinguishing Devices. The Fire Chief or any member of the Bureau of Fire Prevention may make or cause to be made an inspection of the contents and the working conditions of any fire extinguisher or fire extinguishing system. The Bureau of Fire Prevention shall survey each commercial and industrial establishment, mercantile, educational and institutional occupancy, place of assembly, hotel, apartment, and may survey multi-family dwellings and other buildings or dwellings within the City, and shall specify suitable fire detecting devices or extinguishing appliances which shall be provided in or near boiler rooms, kitchens of restaurants, clubs, and like establishments, storage rooms involving considerable combustible material, rooms in which hazardous manufacturing processes are involved, repair garages, and other places of a generally hazardous nature. Such devices or appliances may consist of automatic fire alarm systems, automatic sprinklers, or water spray systems, standpipe and hose systems,

fixed or portable fire extinguishers of a type suitable for the probable class of fire, or approved fire blankets, manual or automatic covers, or other special fire extinguishing systems. In special hazardous processes or storage, appliances of more than one type or special systems may be required.

(f) Investigation of Fires. Pursuant to this Code and Ohio R.C. 3737.24, the Fire Chief shall investigate the cause of all fires, bombings and explosions, examine witnesses, compel the attendance of witnesses and the production of books and papers, and perform all other acts necessary to the effective discharge of such duties. The Fire Chief or the Chief's designee may administer oaths, and enter, for the purpose of examination, any building, premises or vehicle which, in their opinion, is in danger from fire or in which a fire or explosion has occurred.

(g) Orders, Enforcement and Emergencies.

- (1) In the event of any actual or threatened violation of this Fire Code or any ordinance, statute or other regulation establishing requirements for the prevention of fires, including the maintenance of protection and the elimination of hazards in buildings and structures, or the means and adequacy of exit in case of fire from all places in which persons work, live, or congregate for any purpose or length of time, including an emergency situation, the Chief of Fire or the Chief's designee may issue an order that actions be taken or terminated in order to abate or prevent the violation. In addition to or in lieu of such an order, the Chief of Fire or designee may issue a notice of such a violation, provide a reasonable time in which the violation must be corrected, and serve said notice in the same manner as notices of abatement pursuant to Chapter 107 of the Codified Ordinances.
- (2) No person shall fail or refuse to comply with any lawful order issued by the Chief of Fire or the Chief's designee.
- (3) In the event of any actual or threatened violation of the City's Fire Code or any ordinance, statute or other regulation establishing requirements for the protection of the public or prevention of fires, including an emergency situation, the City, in addition to any other action or remedy allowed by law, may bring a criminal action, may institute proper suit in equity or law to prevent or terminate any such violation or remedy such situation, and/or may take action itself or through contractors hired for such purpose to abate the violation or situation in the same manner as the abatement of nuisances pursuant to Chapter 107 of the Codified Ordinances. If the City takes action on its own or through contractors hired for such purpose to abate the violation or situation, the City may assess its costs in the same manner as set forth in Chapter 107 of the Codified Ordinances.
- (4) In any case in which the Chief of Fire or designee determines that any actual or threatened violation of the Fire Code or any ordinance, statute or other regulation establishing requirements for the protection of the public or prevention of fires poses an immediate threat of substantial and/or irreparable danger to human life or health, or the destruction of property, the Chief or the Chief's designee may declare such condition a nuisance and order its immediate abatement, and the Chief or the Chief's designee may take action necessary to immediately abate the violation or situation constituting such threat without advance notice to

the owner. Such action may include entering a property for the purposes of conducting an inspection, to the extent and in the manner allowed by law, or ordering that the property be immediately vacated.

(h) Compliance.

(1) No person shall violate any provision of this Chapter and/or the Ohio Fire Code as adopted herein or any order issued pursuant thereto.

(2) No person shall fail to comply with the fire prevention measures or fire protection activities as prescribed in this Chapter and/or the Ohio Fire Code, or fail to obtain a permit or license for the various uses or activities as required by such Codes, or fail to comply with the City's application and plan submission and processing requirements including payment of the fees designated therefor.

(hi) Nuisances.

(1) Any premises within this City where a fire has occurred, and substantial interior or exterior damage to a building or structure has been suffered, is hereby declared to be a public nuisance. Such nuisance may be abated by the Fire Chief, Director of Building or Director of Housing Inspection in the manner provided in Chapter 107 of the Codified Ordinances.

(2) Any premises found by the Fire Chief or the Chief's designee to pose a threat of fire, or of injury to persons, including Fire personnel, or property due to any of the following may be declared a nuisance by the Chief or the Chief's designee:

- A. Lack of adequate fire protection, as required by law for the particular premises;
- B. Lack of adequate means of exit in case of a fire;
- C. Presence of conditions posing a serious risk of injury to persons attempting to exit the premises in case of a fire, or to Fire personnel attempting to fight a fire in the premises;
- D. Accumulation in the premises of personal property, rubbish or other waste, in such quantity as to pose a threat of substantial and unnecessary fire load, and/or of unknown hazards or other combustibles.

The Chief of Fire shall cause notice of such nuisance to be provided to the owner, lessee, occupant or person in charge or control of the premises in the manner as set forth in Chapter 107 of the Codified Ordinances. If the owner, lessee, occupant, or person in charge or control of a premises fails to abate any nuisance after notice is provided, the City may abate the nuisance and charge the cost to the property, in the manner set forth in Chapter 107 of the Codified Ordinances.

901.07 PERMITS.

A permit program shall be established by the Bureau of Fire Prevention pursuant to Sections 104.2 and 105.1-1 of the Ohio Fire Code, and the Chief of Fire shall issue permits for the activities set forth in such Sections, ~~in Appendix A of Rule 1~~ of the Ohio Fire Code, and in this Code. The owner, lessee, agent, or party in charge or control of any premises upon which any work or activity referenced in this Section is to be conducted or the person conducting or in charge or in control of the work or activity, shall obtain a permit or permits prior to the work or activity being started. A permit shall be obtained for any activity listed in the Ohio Fire Code, ~~including in Appendix A of Rule 1 of said Code,~~ and for the activities listed in this Section as requiring a permit.

(a) Permits are required for the following activities: Hot Work, fire hydrant use, open burning, firework displays, the operation of dry cleaning plants, service stations, and places of assembly, the temporary use of tents, and certain uses of welding, flammable liquids and gases, and the storage of flammables and gases, and other activities listed in this Code and the Ohio Fire Code.

(b) A permit required by this Fire Prevention Code shall be issued upon payment to the City of the fee for each requested permit as set forth herein, provided an application for such permit has first been approved by the Bureau of Fire Prevention.

(c) An application for a Hot Work permit must be accompanied by proof that the contractor, general contractor or subcontractor has completed the training required by the Chief of Fire, proof of current Contractor License under Chapter 547 of the City's ordinances, and written verification and contact information for the person or persons to be onsite at all times during hot work to provide a fire watch as required by the Chief of Fire. At least one person who has undergone the training required by the Chief of Fire shall be onsite at all times during which Hot Work is being performed. The Chief of Fire may require additional terms for any Hot Work permit, as set forth on the application form and/or the permit.

(d) Where work or activities for which a permit is required by this Fire Code are started or completed prior to obtaining the permit, the fees required for the permit shall be tripled, but the payment of such triple fee shall not relieve any person from any violation of the Fire Code or from fully complying with the requirements of the Fire Code or any other State law or City ordinance.

(~~e~~) A permit may be suspended or revoked by the Fire Chief or the Chief's agent if the permittee fails to comply with the permit or otherwise violates the Fire Code or the provisions of Chapter 547 of the City's Ordinances.

(~~f~~) The Chief or the Chief's agent may issue a stop order for any activity authorized by a permit if the permittee is in violation of the permit or this Code, or if the public safety is in any way endangered by the activity.

(~~g~~) An aggrieved person may appeal the issuance, suspension or revocation of a permit, or a stop work order, to the City's Board of Appeals within thirty days of such action by the City, by submitting a written appeal, setting forth the basis of the appeal, to the Fire Chief or the City's Law Department. An appeal does not stay the action for which an appeal is filed.

901.08 PERMIT FEES.

(a) The fees for all permits issued by the Bureau of Fire Prevention shall be \$25.00 unless specifically indicated otherwise in this Fire Code.

(1) Operational permits for fire hydrants shall be \$100.00, and \$75.00 of this amount shall be considered a deposit. The deposit shall be refunded when use of the hydrant has ceased and no damage associated with the use has occurred. If any damage has occurred, the Bureau may require the permittee to make the repairs within a reasonable time, or the Bureau may cause the repairs to be made and deduct the cost from the deposit. The Permittee shall pay the City any amount needed to make the repair that exceeds the amount deposited.

(2) A permit for the installation, removal or repair of an underground storage tank containing flammable or combustible liquids shall be \$100.00.

(3) A permit for Hot Work shall be \$25.00.

(4) No fees shall be charged for construction permits.

(54) No fees shall be charged for bonfire and recreational fire permits.

(b) When multiple permits are required for a specific event or activity at one location, the permit application may be consolidated into a single permit application, and one permit shall be issued if otherwise warranted. The permittee shall pay for a consolidated permit the total amount that would have been paid if the permits were issued separately, unless the applicant requests a reduction of the fee and the Fire Chief approves such reduction to an amount that more closely corresponds to the cost of the necessary inspection activity.

Section 4. Section 1303.01 of the Building Code of the Codified Ordinances of the City of Shaker Heights is hereby enacted as amended as follows:

1303.01 WHEN PERMITS REQUIRED.

(a) A building permit shall be obtained from the Director of Building and Housing as required by the Ohio Building Code ("OBC"), as set forth in Sections 3783 and 3791 Ohio Revised Code, and the Residential Code of Ohio for One, Two and Three Family Dwellings ("RCO") as set forth in the Ohio Administrative Code at Sections 4101:8-1 to 4101:8 - 43 before proceeding with any excavation for or the construction, alteration, repair, moving or demolition of any building or appurtenant structure.

(b) A separate permit shall be obtained for signs, electrical work, plumbing work, heating appliances and any other equipment installation that is regulated by this Building Code.

(c) No building permit shall be issued for work that will include Hot Work, as defined in the Fire Code, unless and until a copy of the Hot Work Permit issued by the Fire Department has been provided to the Director of Building and Housing. Any work performed without a Hot Work permit when it is required by the Fire Code shall be considered a violation of this Chapter.

Section 5. This ordinance shall take effect from and after the earliest time allowed by law.

Enacted

Approved this _____ day of _____, 2019.

DAVID E. WEISS, Mayor

Attest:

JERI E. CHAIKIN
Clerk of Council



SHAKER HEIGHTS

MEMORANDUM

TO: Members of City Council

FROM: William M. Ondrey Gruber, Director of Law 

CC: Mayor David E. Weiss
Jeri E. Chaikin, Chief Administrative Officer

DATE: February 6, 2019

RE: **Amendments to Modernize the City's Open Meetings Ordinances and Increase City Government Transparency**

.....

The City has adopted its own Open Meetings ("Sunshine") law, Chapter 115 of the Codified Ordinances, pursuant to the City's Home Rule powers under the Ohio Constitution. Most of the Chapter was enacted in July 1990, with a couple of updates in 1999 and 2013.

Mayor Weiss is proposing to Council to enact updates to Chapter 115 - Open Meetings, in order to modernize certain provisions and to provide for enhanced transparency.

The proposed amendments are attached to this Memorandum.

The amendments would do the following:

- Update and clarify the existing requirement for the public posting of the City's Sunshine Calendar. Currently, the ordinance requires only the posting of the calendar at City Hall and at the Shaker Library where few people view them. The amendment would require that the Calendar be posted "publicly in any manner that provides the public with easy and wide access, as determined by the Clerk of Council, which may include, but is not limited to, on the Internet and social media, and in paper form at City Hall."
- Update and clarify the existing requirement for providing notice of special meetings of Council and Council committees, and other public bodies. Currently, the ordinance requires only that notice of special meetings be communicated "in writing, or by telephone and recorded in a written log." No written log has been used for many years, and the purpose of such a log is unknown. The amendment would provide that public notice of special meetings "may be communicated in the same manner as regular meetings, taking into account the necessity of alerting the public and news media more rapidly than for regular meetings." This change would add a requirement for notice to be provided in a timely manner, and in a manner where notice would reasonably be expected to be received, since special meetings may be called with only 24-hour advance notice.

- Update and modernize how personal notice of meetings is provided.
 - Currently, Chapter 115 requires that the City provide personal notice to anyone requesting a copy of the monthly Sunshine Calendar, which may be sent by “mail, electronic or paper.” The ordinance provides that: “The City may...charge a fee, not to exceed \$10.00 per year, to cover the costs of such notice if provided in paper form.” The City has not been charging for providing the calendar.

The amendment would require that the Sunshine Calendar be sent by “electronic mail, unless notice by regular mail is requested.” It would also place the responsibility of maintaining proper contact information on the person or entity requesting such notice.

- The existing ordinance also requires that a person may request personal notice of a special meeting, which is to be provided in writing or by telephone.

The amendment would be more specific about personal notice of regular and special meetings. It specifies that notice be given like notice of the Sunshine Calendar (i.e. by “electronic mail, unless notice by regular mail is requested.”) However, for special meetings, since they can be scheduled just 24 hours in advance, the amendment allows the City to skip regular mail notice if the meeting is scheduled less than 48 hours in advance. But email notice would still be required.

- Clarify that minutes of all regular and special meetings of public bodies may be recorded on paper or electronically.
- Eliminate the 10 cent fee per page for copies of minutes. Public records are generally provided by the City electronically without charge, and on paper at 5 cents per page.

The City already uses email, social media, and the City website to publicize all of its committee, board and commission meetings and meeting changes or cancellations. All current Council and committee meeting agendas are posted on the City website, along with accompanying memos and other pertinent information. After each Council and Council committee meeting, the audio is posted on the website. After approval, the meeting minutes are also posted.

To inform more residents and the general public about City actions, the Mayor has directed that agendas, meeting packets, meeting minutes and the meeting audio recording be posted on the City website for City boards and commissions in addition to just Council and committee meetings. The committees, boards and commissions are:

- | | |
|---|--|
| • Safety and Public Works Committee | • City Planning Commission/Board of Zoning Appeals |
| • Finance and Administration Committee | • Landmark Commission |
| • Recreation Committee | • Fair Housing Review Board |
| • Communications and Marketing Committee | • Civil Service Commission |
| • Neighborhood Revitalization and Development Committee | • Tree Advisory Board |
| • Sustainability Committee | • Records Commission |

For the Architectural Board of Review (ABR) and the Board of Appeals (BOA), the Agendas and Meeting Minutes will continue to be posted. These Boards are quasi-judicial forums whose meetings can run for 3 – 4 hours or more, and deal with individual resident requests regarding their homes, including details about property owners’ residences and finances. Thus, we will continue not posting the audio of their meetings, though the recordings are available by request as a public record. The meetings will also continue to be publicized and are open to the public should anyone desire to attend either ABR or BOA meetings.

The Mayor has also asked that we expand the posting and distribution of agendas and other information for City task forces (which are not public bodies under the Sunshine laws). These task forces are:

- Deer Task Force
- Risk Management Task Force (formerly the Liability and Property Insurance subcommittee of the Finance and Administration Committee)
- Facilities Planning Task Force
- Human Relations Task Force
- Public Art Task Force

The agenda, meeting materials and the audio recordings of task force meetings will be posted on the City website. Minutes are not prepared after task force meetings. Task force meetings will be generally open to the public, and can be attended by any member of the public who desires to observe the meeting. Task forces are created to provide advice to the Administration and Council not recommend legislative action. There may be circumstances when a task force meeting is held that will not be open to the public. Examples could be a discussion of employee health care by the Risk Management Task Force which could affect employees' compensation, or a Facilities Task Force discussion about the acquisition of real estate.

It is requested that Council enact the proposed updates to Chapter 115 - Open Meetings, in order to modernize certain provisions and to provide for enhanced transparency by opening more meetings to the public and ensuring sufficient notice is given to residents of certain meetings of Mayoral task forces.

Attachment
councilmemos/0123-OpenMeetingsAmendments-Chapter115-CODORD-REVISED

ORDINANCE NO.

BY:

Amending Sections 115.05, 115.06, and 115.07 of the Administrative Code of the Shaker Heights Codified Ordinances relative to public notification of meetings of public bodies.

WHEREAS, Section 115.05 was most recently enacted in Ordinance No. 90-61, on July 23, 1990; and

WHEREAS, Section 115.06 was most recently enacted in Ordinance No. 13-114, on December 16, 2013; and

WHEREAS, Section 115.07 was most recently enacted in Ordinance No. 99-56, on April 26, 1999; and

WHEREAS, this Council has determined to modernize certain public notification provisions and to provide for enhanced transparency.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Shaker Heights, State of Ohio:

Section 1. Sections 115.05, 115.06, and 115.07 of the Administrative Code of the Codified Ordinances of the City of Shaker Heights as heretofore in effect are hereby repealed.

Section 2. Sections 115.05, 115.06, and 115.07 of the Administrative Code of the Codified Ordinances of the City of Shaker Heights are hereby enacted as amended as follows:

115.05 PUBLIC NOTIFICATION.

(a) Regular Meetings. The time and place of all regular meetings of public bodies shall be noted in a calendar of monthly meetings. This calendar shall be posted publicly in any manner that provides the public with easy and wide access, as determined by the Clerk of Council, which may include, but is not limited to, on the Internet and social media, and in paper form at the City Hall and all Shaker Heights public libraries.

(b) Special Meetings. Prior notification of a meeting of a public body which is not otherwise noted on the monthly calendar shall be made to any news media requesting such notification and, except in the case of an emergency, shall be given at least twenty-four hours prior to the time of such meeting. Such notification shall include the time, place and purpose of the special meeting, and may be communicated in the same manner as regular meetings, taking into account the necessity of alerting the public and news media more rapidly than for regular meetings in writing, or by telephone and recorded in a written log. Such notification shall not preclude the public body from discussing or acting upon matters in addition to the matter for which the special meeting was called.

115.06 PERSONAL NOTIFICATION.

(a) Notice of the calendar of monthly meetings shall be provided to any person, organization or group of persons that makes such a request is entitled to notice by mail, electronic or paper, of the calendar of monthly meetings. Notification shall be by electronic mail, unless notice by regular mail is requested. Requests for this notice, and a request for notice by regular mail, shall be made to the Clerk of Council. The City may require that all such requests be in writing upon a form provided by the Clerk, and

~~may charge a fee, not to exceed \$10.00 per year, to cover the costs of such notice if provided in paper form. It is the responsibility of the person or entity requesting such notice to maintain a valid electronic mail and/or regular mailing address.~~

~~(b) Advance notice of regular and special meetings of any public body shall be provided to Any person, organization or group of persons that makes such a request may upon request, receive advance notice of special meetings of public bodies. Such notice shall be given as provided in Section 115.05(b), except that regular mail notice to a person or entity that has requested such form of notice shall be made of a special meeting only if notice of the meeting under Section 115.05(b) is made at least 48 hours prior to the meeting. It is the responsibility of the person or entity requesting such notice to maintain a valid electronic mail and/or regular mailing address.~~

115.07 MINUTES OF MEETINGS.

(a) Minutes. Minutes of all regular and special meetings of public bodies shall be promptly recorded in writing, paper and/or electronic, and open to the public for inspection. Minutes of executive sessions of public bodies need only reflect the general subject matter of discussion in such executive sessions.

(b) Location of Minute Books. The Clerk of Council shall keep a minute book for each public body. The minute books shall contain the minutes of all meetings of each such public body. The public may inspect the minute books at all reasonable times.

(c) Copy of Minutes. Any person may obtain from the Clerk of Council a copy of the minutes of any regular or special meeting of a public body, ~~at the cost of ten cents (10¢) per page.~~

Section 3. This ordinance shall take effect from and after the earliest time allowed by law.

Enacted

Approved this _____ day of _____, 2019.

DAVID E. WEISS, Mayor

Attest:

JERI E. CHAIKIN
Clerk of Council