



SHAKER HEIGHTS

City Council Agenda City Hall Council Chambers Saturday, March 14, 2020 at 9:00 am

Public Comment on Agenda Items

1. Approving and authorizing Council to more readily make decisions of an emergency nature if significant numbers of Council Members cannot be present during the current COVID-19 crisis, and to grant the Mayor extraordinary authority to expend funds of the City for certain purchases of goods and services in order to reduce the need for Council meetings, and the duration of such meetings, during the present crisis, and declaring an emergency.

Documents:

[EMERGENCY.PDF](#)

2. Accepting the lowest and best bid and authorizing a contract with Ronyak Paving, Inc. in the total estimated amount of \$1,688,000 for the 2020 Street Resurfacing Project, and declaring an emergency.

Documents:

[RONYAK.PDF](#)

Please Note:

Residents are encouraged to share their comments/questions regarding legislative items on the agenda in advance of the meeting by emailing Jeri E. Chaikin at JERI.CHAIKIN@SHAKERONLINE.COM or by calling (216) 491-1424. The City Council meeting audio will be available on Monday, March 16, 2020, on the City's [WEBSITE](#).

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.



Memorandum

To: Members of Council

From: William M. Ondrey Gruber, Director of Law

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

Date: March 12, 2020

Re: **Legislation Temporarily Modifying Council Voting Rules, and Granting the Administration Expanded Authority to Contract**

It is requested that Council enact the accompanying ordinance that does the following:

1. temporarily modifies the number of votes needed to adopt an emergency ordinance, and
2. grants the Mayor expanded authority to expend funds for certain purchases of goods and services.

As we are all aware, the Ohio Department of Health has declared that there is community spread of the coronavirus, called COVID-19, which is a respiratory disease marked by fever, cough and difficulty breathing. On March 9, 2020, Governor DeWine declared an emergency in the State of Ohio due to the spread of the virus in Ohio, followed on March 11, 2020, by a declaration by the World Health Organization (WHO) that the COVID-19 crisis is now a worldwide pandemic.

Mayor Weiss has taken a number of actions to reduce community gatherings that might expose City employees and elected officials, Council Committee members, and the general public, to this current public health threat. Thus, on March 11, the Mayor announced a number of “social distancing” steps, including cancellation of virtually all City meetings through April 30, 2020. Only the regular meetings of City Council and the Planning Commission/Board of Zoning Appeals, and periodic meetings of the Architectural Board of Review (ABR) will occur in March and April, and potentially for a longer period. As the COVID-19 emergency evolves, there may be additional cancellations.

In addition, the City is making emergency action plans to cover a number of possible eventualities during the crisis, including circumstances when, through governmental declarations and/or due to illness or quarantines, Council Members and/or City staff may be unable to work or meet.

The Mayor has asked the Law Department to provide guidance as to what temporary actions the City and Council may take under the City’s Charter and Ordinances to enable the City to continue operating and to respond to the current public health crisis.

Proposal #1 – Temporarily Modify the Number of Votes Needed to Adopt an Emergency Ordinance

The City’s Charter grants authority to City Council to adopt Ordinances governing the organization and operations of the City and Council. Under the Charter, which may only be amended by a vote of the citizens, a majority of the members elected to the Council constitutes a quorum for any meeting, which means that at least four of the seven elected Council Members are required to be in attendance at a meeting in order for the Council to transact any business (City Charter Article II, Section 5).

The Ordinances provide that every action of Council by ordinance or resolution must be approved by at least four Council Members, which is more than a majority of a quorum if only 4 or 5 Council members are in attendance at a meeting. (Section 113.05(a))

Since the requirement of 4 votes is set forth in the Ordinances, and not the Charter, Council may alter this requirement. Thus, the first proposal being presented to Council is to temporarily reduce the requirement for the number of votes needed to adopt an ordinance to the majority of a quorum. This is intended to enable the Council to more readily make decisions of an emergency nature if significant numbers of Council Members cannot be present during the crisis.

This would mean that a vote of 3 members would be needed to adopt any ordinance if there are only 4 or 5 Council Members in attendance. It would still be required that 4 members would constitute a quorum for any Council action, and it would still be required that any ordinance or resolution must be approved by at least 4 members if there are more than 5 members in attendance at a meeting, as shown in the chart below:

TEMPORARY VOTING RULE CHANGE DURING DECLARED HEALTH EMERGENCY	
Numbers of Council Members Present at a Council Meeting	Number of Votes Needed to Adopt Emergency Ordinance
1 - 3 Members	Not Applicable—No Quorum/ No Voting
4 - 5 Members	3 Members
6 - 7 Members	4 Members

Also, the City’s Ordinances require that ordinances and resolutions must be considered at 3 separate Council meetings before adoption, unless at least 5 Council Members vote to suspend that rule to allow a vote on an item at first or second reading. However, Section 113.05(b) of the Ordinances provides that an ordinance or resolution that is adopted as an emergency measure may be passed after one reading, without the concurrence of at least five Council Members. Thus, the only ordinances that would be approved on first reading under this temporary rule change would be emergency ordinances, unless there are at least 5 Council Members present and 5 members vote to suspend this rule for approval on first reading. This is appropriate since this rule change is intended to address emergency matters.

Proposal #2 – Temporarily Grant the Mayor Expanded Authority to Expend Funds for Certain Purchases of Goods and Services

The City’s Charter, at Article VI, Section 7, states that Council shall by ordinance set the amount of expenditure above which formal competitive bidding is required. This amount may be set or changed in January of every odd numbered year pursuant to the Charter. Council has set that amount at \$25,000 (Section 141.03).

Expenditures of \$25,000 or less do not require Council approval or *formal* competitive bidding, but the City’s Purchasing Policy requires competitive procedures be followed depending on the size and type of purchase.

There is an exception in the Charter, that allows Council to authorize expenditures above the limit (i.e. above \$25,000) *without* formal public bidding in specific cases. Those specific types of expenditures are listed in the Charter and in the ordinances, and are as follows:

- acquisition of real estate;
- discharge of noncontractual claims against the City;
- personal services;
- joint use of facilities or exercise of powers with other political subdivisions;
- product or services of public utilities; or
- in the case of urgent emergency for the immediate protection of public property or public safety.

The second proposal to Council is to grant the Mayor extraordinary authority to expend funds in order to reduce the need for Council meetings, and the duration of such meetings, during the present crisis.

The temporary authority would authorize expenditures without formal bidding up to \$100,000 for any of the actions already listed in the Charter and ordinances: the acquisition of real estate, the discharge of noncontractual claims against the City, personal services, the joint use of facilities or exercise of powers with other political subdivisions, the product or services of public utilities, or in the case of urgent emergency for the immediate protection of public property or public safety.

The temporary authority would NOT change the requirement that formal competitive bidding must be conducted for any purchase other than those listed above for expenditures above \$25,000.

An example of how this change would be helpful in the operations of the City, is a contract being proposed this week by the IT Department with WOW Business, to upgrade the City's Internet service, to allow for some of the extraordinary activities made necessary by the current crisis. This is considered to be a utility service, but because the contract is for more than \$50,000, Council approval would be necessary. However, if the proposed emergency powers ordinance is approved, then the City could enter into this contract immediately without waiting to bring it to Council for approval.

Additional Provisions in the Proposed Ordinance

The proposed ordinance also does all of the following:

- It formally provides for Council to declare that a state of urgent emergency exists in the City due to the presence of COVID-19, as the basis for this action.
- It requires that the Mayor advise Council of any purchase made pursuant to the extraordinary authority being granted, and that he must do so in advance if possible, and otherwise immediately thereafter.
- It states that the emergency declaration shall continue for a period of up to ninety (90) days, and that it may be extended or shortened by vote of Council.
- It requires that Council meetings still be held at least one time per month if a sufficient number of Council Members are available to attend to constitute a quorum (of at least four members), and if no recommendations or orders of the Cuyahoga County Board of Health (CCBH), State of Ohio, or federal Centers for Disease Control (CDC) makes the holding of a meeting inadvisable.

I request that Council adopt the proposed ordinance on first reading and as an emergency in order to address the concerns of the present crisis by providing tools to Council and the Administration to be able to operate the City in the best interests of the citizens, while acting within the requirements of the City's Charter.

ORDINANCE NO.

BY:

Approving and authorizing Council to more readily make decisions of an emergency nature if significant numbers of Council Members cannot be present during the current COVID-19 crisis, and to grant the Mayor extraordinary authority to expend funds of the City for certain purchases of goods and services in order to reduce the need for Council meetings, and the duration of such meetings, during the present crisis, and declaring an emergency.

WHEREAS, the Ohio Department of Health has declared that there is community spread of the coronavirus, called COVID-19, which is a respiratory disease marked by fever, cough and difficulty breathing, and on March 9, 2020, Governor DeWine declared an emergency in the State of Ohio due to the spread of the virus in Ohio, followed on March 11, 2020, by a declaration by the World Health Organization (WHO) that the COVID-19 crisis is now a worldwide pandemic; and

WHEREAS, pursuant to Article XVIII, Sections 3 and 7, of the Ohio Constitution, the City has the authority to adopt, and has adopted, a Charter and Ordinances governing the organization and operations of the City and its Council; and

WHEREAS, the City's Charter, in Article II, Section 5, states that a majority of the members elected to the Council shall constitute a quorum, which means that at least four Council Members are required to be in attendance at a meeting in order for the Council to transact any business; and

WHEREAS, the City's Ordinances require, in Section 113.05(a), that every action of Council by ordinance or resolution must be approved by at least four Council Members; and

WHEREAS, the City's Ordinances ordinarily require that ordinances and resolutions must be considered at three separate Council meetings before adoption, unless at least five Council Members vote to suspend such rule to allow a vote on an item at first or second reading, except that Section 113.05(b) provides that an ordinance or resolution that is adopted as an emergency measure may be passed after one reading, without the concurrence of at least five Council Members; and

WHEREAS, the City's Charter, at Article VI, Section 7, states that Council may authorize expenditures without public bidding in dollar amounts exceeding the limit set by Council in specific cases; and

WHEREAS, in Section 141.03 of the City's ordinances, Council has required that competitive bidding must be conducted for any expenditure over \$25,000, unless Council adopts an ordinance for the expenditure of money without bidding over \$25,000 for any of the following actions: the acquisition of real estate, the discharge of noncontractual claims against the City, personal services, the joint use of facilities or exercise of powers with other political subdivisions, the product or services of public utilities, or in the case of urgent emergency for the immediate protection of public property or public safety; and

WHEREAS, this Council has determined that it is in the best interests of the City and its citizens to ensure the efficient and continuous operation of the City government during the present COVID-19 crisis, and that to meet this objective Council should:

1. enable the Council to more readily make decisions of an emergency nature if significant numbers of Council Members cannot be present during the crisis, by allowing decisions of Council to be made by a majority of a quorum, which means by a vote of 3 members if there are only 4 or 5 Council Members in attendance, while still requiring 4 members to constitute a quorum for any Council action, and still requiring that any ordinance or resolution must be approved by at least 4 members if there are more than 5 members in attendance at a meeting, as shown in the chart below:

TEMPORARY VOTING RULE CHANGE DURING DECLARED HEALTH EMERGENCY	
Numbers of Council Members Present at a Council Meeting	Number of Votes Needed to Adopt Emergency Ordinance
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6 - 7 Members	4 Members

and

2. adopt this ordinance granting the Mayor extraordinary authority to expend funds in order to reduce the need for Council meetings, and the duration of such meetings, during the present crisis, by authorizing the expenditure of money without bidding over \$25,000 and up to \$100,000 for any of the following actions: the acquisition of real estate, the discharge of noncontractual claims against the City, personal services, the joint use of facilities or exercise of powers with other political subdivisions, the product or services of public utilities, or in the case of urgent emergency for the immediate protection of public property or public safety.

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

Section 1. This Council declares an urgent emergency exists in the City due to the presence of COVID-19 in Northeast Ohio, and based upon social distancing and other recommendations of public health officials of the Cuyahoga County Board of Health, the Health Department of the State of Ohio and the federal Centers for Disease Control (CDC), and that such emergency declaration shall continue for a period of up to ninety (90) days, which period may be extended or shortened by vote of Council.

Section 2. That during the period of this emergency, notwithstanding and to the contrary of Section 113.05(a) of the City's Codified Ordinances, the approval of at least a majority of those Council members in attendance at any meeting of Council at which a quorum (of at least four members) is present shall be required to adopt any ordinance or resolution. All notices and time period for notices as set forth in Chapter 113 of the Codified Ordinances shall be followed and remain in effect during the emergency.

Section 3. That during the period of this emergency, the Mayor is hereby granted the authority to expend funds of the City up to the amount of \$100,000 without public bidding for the acquisition of real estate, for the discharge of noncontractual claims against the City, for personal

services, for the joint use of facilities or exercise of powers with other political subdivisions, for the product or services of public utilities (including those municipally operated) or in the case of urgent emergency, for the immediate protection of public property or public safety, but no expenditure for any purpose other than those listed here of more than twenty-five thousand dollars (\$25,000) shall be made, except pursuant to contract made with the lowest and best bidder after advertising for bids for two (2) consecutive weeks in a newspaper of general circulation in the City. The Mayor shall advise Council of any purchase made pursuant to this extraordinary authority, and do so in advance if possible, and otherwise immediately thereafter.

Section 4. During the period of this emergency, Council meetings shall be held at least one time per month if a sufficient number of Council Members are available to attend to constitute a quorum (of at least four members), and if no recommendations or orders of the Cuyahoga County Board of Health (CCBH), State of Ohio, or federal Centers for Disease Control (CDC) makes the holding of such a meeting inadvisable.

Section 5. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare for the reason that it is necessary to ensure the efficient and continuous operation of the City government during the present COVID-19 crisis, and to allow for the possibility that significant numbers of Council Members cannot be present during the crisis, and to reduce the need for Council meetings, and the duration of such meetings, during the present crisis, and, therefore, this ordinance shall take effect immediately upon its enactment and approval by the Mayor.

Enacted

Approved this ____ day of _____ 2020.

DAVID E. WEISS, Mayor

Attest:

JERI E. CHAIKIN
Clerk of Council

coun20/0311emergencypowers



Memorandum

To: Members of City Council
From: Patricia Speese, Director of Public Works
cc: Mayor David E. Weiss
Chief Administrative Officer Jeri E. Chaikin
Date: March 12, 2020
Re: 2020 Street Resurfacing

On February 14, 2020 the City of Shaker Heights received five (5) bids for the 2020 Street Resurfacing project. The Contractors and their submitted bids are as follows:

Contractor	Total
Chagrin Valley Paving	\$1,674,352.00
Ronyak Paving, Inc	\$1,688,000.00
Karvo Companies, Inc.	\$1,707,565.70
Barbicas Construction	\$1,734,123.40
The Shelly Company	\$1,888,279.90

The Shaker Heights Public Works construction cost estimate was \$1,710,000.00.

The apparent low bidder is Chagrin Valley Paving with a bid total of \$1,674,352.00.

Chagrin Valley Paving was awarded the 2015 Street Resurfacing project. In review of that project, Public Works issued a Default of Contract letter because the contractor had been unresponsive. Some of the issues that we encountered involved not following our clear direction when resurfacing around Laurel School, causing chaos and mass confusion, overloaded trucks, speeding (48 mph in a 35 mph zone) employees being rude to residents and failure to follow our contract which resulted in the Default of Contract letter. After increasing our quantities in early August per the contract, the contractor was non responsive and it was not until Public Works contacted the Bonding Company and issued the Default of Contract letter that Chagrin Valley Paving responded and did the work in late September. In general, the quality of work performed under that contract was fair. This is consistent with other municipalities we have spoken to.

The second lowest bidder was Ronyak Paving. This contractor has worked on multiple projects for the City (Shaker Blvd. Resurfacing, 2016 & 2017 Street Resurfacing projects). Additionally, they have performed resurfacing work within the City as a sub-contractor for other utility work. Their quality of

work exceeds industry standards, the project managers are responsive and professional. The difference between the lowest and second lowest bidders was \$13,648.00. Ronyak Paving submitted the lowest, best bid which represents less than a one-percent increase from Chagrin Valley Paving's bid.

The City Charter (Article VI, Section 7), requires that contracts for expenditures over a certain amount set by Council (currently \$25,000) must be made only after competitive bidding and an award to the "lowest and best bidder." This same standard is set forth in the Codified Ordinances at Section 141.03. That Section also states that the "lowest and best bid shall be determined and contract awarded upon the written approval of the Mayor, the Director of Finance and the head of the department involved, except that the Mayor *may* refer such determination to Council."

It has been a common practice, in many instances, that the award of a contract to other than the lowest bidder has been taken to Council for approval.

This request for Council approval was made to the Safety & Public Works Committee at their March 6, 2020 meeting. Chairman Zimmerman asked Law Director Gruber to explain the "lowest and best" standard. This standard allows the City to award a contract to a bidder based on both a consideration of price and of which bidder is best, based on the City's relative experience with the bidding firms, references, quality of work, cooperation in scheduling and completing the work, timeliness, etc. This determination is within the City's reasonable discretion to make in its determination of the City's best interests.

At the Committee meeting, Council Member Zimmerman commented that the problem with a poor job is that you are stuck with it for many years. Citizen Member Hren commented on the importance of going with the best contractor. The Committee unanimously supported this request.

In this situation, the second lowest bidder has been determined to be the best bidder compared to the other bidders, and its bid price is less than 1% higher than the bid of the low bidder. Thus the bid prices are virtually identical.

Based on their bid and previous experience with the City, it is recommended that Ronyak Paving be awarded the 2020 Street resurfacing project at a cost of \$1,688,000.00. We request that this be passed as an emergency and under suspension of the rules on first reading in order to meet our timeframe to start resurfacing next month.

ORDINANCE NO.
BY:

Accepting the lowest and best bid and authorizing a contract with Ronyak Paving, Inc. in the total estimated amount of \$1,688,000 for the 2020 Street Resurfacing Project, and declaring an emergency.

WHEREAS, on February 14, 2020, the City solicited bids for the 2020 Street Resurfacing Project, and the City received five (5) bids for such services; and

WHEREAS, on February 14, 2020, Ronyak Paving, Inc. submitted a bid for the 2020 Street Resurfacing Project; and

WHEREAS, the bid of Ronyak Paving, Inc. has been determined to be the lowest and best bid, based on experience and references, and the fact that its bid is less than 1% higher than that of the lowest bid; and

WHEREAS, the Director of Public Works has recommended the acceptance of the bid properly submitted by Ronyak Paving, Inc. on February 14, 2020, in the total estimated amount of ONE MILLION SIX HUNDRED EIGHTY-EIGHT THOUSAND DOLLARS (\$1,688,000) for the 2020 Street Resurfacing Project; and

WHEREAS, the City's Charter, in Article VI, Section 7, requires that contracts for expenditures over a certain amount set by Council (currently \$25,000) must be made only after competitive bidding and an award to the "lowest and best bidder" and this same standard is set forth in the Codified Ordinances at Section 141.03.

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

Section 1. Pursuant to City Charter Article VI, Section 7, and Section 141.03 of the Codified Ordinances, this Council hereby accepts the bid of Ronyak Paving, Inc. properly submitted on February 14, 2020, in the total estimated amount of ONE MILLION SIX HUNDRED EIGHTY-EIGHT THOUSAND DOLLARS (\$1,688,000) for the 2020 Street Resurfacing Project as the lowest and best bid.

Section 2. The Mayor is hereby authorized to enter into a contract with Ronyak Paving, Inc. in the total estimated amount of ONE MILLION SIX HUNDRED EIGHTY-EIGHT THOUSAND DOLLARS (\$1,688,000) for the 2020 Street Resurfacing Project. Said contract shall be in the form as approved by the Director of Law.

Section 3. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare for the reason that it is necessary in the current operation of the City and to meet the City's timeframe to start resurfacing in April, 2020 so that the work may be completed during the construction season, and due to the current COVID-19 public health crisis which may delay or prevent Council meetings in the near future, and therefore, this ordinance shall take effect immediately upon its enactment and approval by the Mayor.

Enacted

Approved this ____ day of _____ 2020.

DAVID E. WEISS, Mayor

Attest:

JERI E. CHAIKIN
Clerk of Council

coun20/0312ronyakpaving