

# Ordinance No. 7586

## AN ORDINANCE AMENDING SECTION 905.05 OF THE CODIFIED ORDINANCES

WHEREAS, An unincorporated organization referring to itself as "Occupy Defiance" asked for an interpretation of Codified Ordinance 905.05 as applied to the organization's past conduct and future intent to write opinions, slogans and other statements on public sidewalks using impermanent chalk; and,

WHEREAS, Council directed the City Law Director to provide the requested opinion and the Law Director concluded that Codified Ordinance 905.05 is a content-neutral regulation that forbids the act of painting on public walks with permanent or impermanent materials and further concluded that Codified Ordinance 905.05 is not enforceable against children of tender age because they lack the maturity of judgment required to commit a crime; and,

WHEREAS, Occupy Defiance brought suit in District Court to invalidate Codified Ordinance 905.05 on the grounds that the Ordinance, as interpreted, is not a content neutral regulation of the place or manner of speech but an attempt to censor speech based on public officials' agreement or disagreement with the message conveyed; and,

WHEREAS, the Complaint and supporting documents filed in the action challenge the correctness of the interpretation as well as the Constitutionality of the Ordinance as interpreted; and,

WHEREAS, Council concurs with the Law Director's conclusions that:

1. Codified Ordinance 905.05, as previously enacted, employs the word "paint" as a verb and prohibits the act of painting on sidewalks regardless of the permanency of the materials used and regardless of the message communicated;
2. Codified Ordinance 905.05, as previously enacted, does not proscribe a strict liability offense and that, pursuant to Codified Ordinance 501.07, the culpable mental state of "recklessness" is an essential element of the offense; and,

WHEREAS, Elimination of doubt about the intended meaning of Codified Ordinance 905.05 will enable the District Court to dispense with arguments pertaining to statutory construction and properly focus attention on the constitutionality of the measure as enacted and correctly interpreted;

Now therefore, be it enacted by the Council of the Municipality of Defiance, Ohio, that:

Section 1: Section 905.05 of the Codified Ordinances is hereby amended to provide (deleted text ~~stricken~~, newly added text in italics:

### 905.05 DEFACING SIDEWALKS; SPITTING

No person shall recklessly deface or disfigure any sidewalk or part thereof by painting on the sidewalk ~~names, words or advertisements~~ with permanent or impermanent materials, or by pasting or placing printed bills or posters thereon. No person shall spit on any street or sidewalk or in any public place in the City.

Section 2: It is found and determined that all legislative actions pertaining to the adoption of this Ordinance were taken in Public Session and that all deliberations that affected or influenced any such legislative act, including all deliberations in Committee, were conducted in Public Session or in Executive Session duly convened in accordance with law.

Section 3: This Ordinance shall be effective on the earliest date permitted by law.

Passed: February 18, 2014

Mike McCann  
President of Council

Attest: Lisa Elders, Clerk

Approved: February 18, 2014

Bob Armstrong  
Mayor

# Ordinance No. 7587

## AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO CONTRACT WITH FITZENRIDER, INC. FOR THE INSTALLATION OF HVAC IMPROVEMENTS TO THE CENTRAL FIRE STATION

WHEREAS, The municipal facilities located at 324 Perry Street are served by an integrated heating and air conditioning system that is aged and difficult to maintain due to the unavailability of replacement parts; and,

WHEREAS, It has been determined that the building can be more effectively and cost efficiently heated and cooled by the installation of a separate system to heat and cool the fire station; and,

WHEREAS, Fitzenrider, Inc. submitted the lowest cost proposal to disconnect the fire station from the central boiler and install forced air heating and cooling appliances within the fire station;

Now therefore, be it enacted by the Council of the Municipality of Defiance, Ohio, that:

Section 1: The City Administrator is authorized to contract with Fitzenrider, Inc. to supply and install all heating and air conditioning equipment and to complete all associated mechanical work described by the quotation dated December 20, 2013, at the price therein quoted.

Section 2: The Finance Director is authorized to pay the contract price of \$34,634.00 and any incidental costs arising under the authorized contract or incurred incident to the performance of contract work from capital improvement funds allocated for expenditure by 2014 budgetary line 403-901-5296-963.000.

Section 3: It is found and determined that all legislative actions pertaining to the adoption of this Ordinance were taken in Public Session and that all deliberations that affected or influenced any such legislative act, including all deliberations in Committee, were conducted in Public Session duly convened in accordance with law.

Section 4: This Ordinance shall be effective on the earliest date permitted by law.

Passed: February 18, 2014

Mike McCann  
President of Council

Attest: Lisa Elders, Clerk

Approved: February 18, 2014

Bob Armstrong  
Mayor

# Ordinance No. 7588

## AN ORDINANCE AUTHORIZING THE PURCHASE OF A PICK-UP TRUCK FOR USE BY THE WATER DIVISION

WHEREAS, the 1998 GMC-Sonoma, VIN #1GTCT14X6W8542683, is no longer serviceable and is scheduled for replacement; and,

WHEREAS, the motor vehicle mechanic has determined that certain parts may be salvaged from the vehicle and used to maintain other vehicles of similar vintage manufactured by General Motors Corporation; and,

WHEREAS, the residual value of the aforesaid 1998 GMC-Sonoma is negligible; and,

WHEREAS, the City Administrator solicited proposals to supply a suitable replacement vehicle for use by the Water Division and Mark Moats Ford submitted the lowest cost proposal;

Now therefore, be it enacted by the Council of the Municipality of Defiance, Ohio, that:

Section 1: The inoperable 1998 GMC-Sonoma, VIN #1GTCT14X6W8542683 presently assigned for use to the Water Division is declared to be municipal surplus and the City Administrator is authorized to salvage such parts thereof as may have residual value and to dispose of the remainder by sale to a metals recycling firm.

Section 2: The City Administrator is authorized to purchase one 2014 Ford F-150 pick-up truck conforming to the product description proposed by Mark Moats Ford, Inc. on January 29, 2014, from Mark Moats Ford, Inc. at the proposed price of \$21,125.00.

Section 3: The City Finance Director is authorized to pay the accepted purchase price from 2014 budget line 591-537-5-2-980880.

Section 4: It is found and determined that all legislative actions pertaining to the adoption of this Ordinance were taken in Public Session and that all deliberations that affected or influenced any such legislative act, including all deliberations in Committee, were conducted in Public Session duly convened in accordance with law.

Section 5: This Ordinance shall be effective on the earliest date permitted by law.

Passed: February 18, 2014

Mike McCann  
President of Council

Attest: Lisa Elders, Clerk

Approved: February 18, 2014

Bob Armstrong  
Mayor

## RESOLUTION No. 2463

### A RESOLUTION DECLARING THE SERVICES TO BE PROVIDED TERRITORY PROPOSED FOR ANNEXATION AND ESTABLISHING ZONING RESTRICTIONS PERTAINING THERETO

Whereas, On February 4, 2014, the City received notice of the filing of a petition seeking to annex 17.893 acres of land comprised of Lots 1-30 in and of the Green Acres and Green Acres Extension subdivisions located in Defiance Township, Section 28; and,

Whereas, Revised Code Section 709.03(D) requires Council to adopt a Resolution declaring the services to be provided the territory proposed for annexation and to file the same with the Clerk of the Board of County Commissioners not later than the 20<sup>th</sup> day preceding the date on which the Board of County Commissioners is scheduled to conduct hearings on the Petition;

Now therefore, be it resolved by the Council of the Municipality of Defiance, Ohio, that:

Section 1: The City of Defiance consents to approval of the aforesaid Petition for Annexation now pending before the Board of County Commissioners.

Section 2: Upon annexation, the lands described by the Petition will be provided all customary general governmental services in the same manner and on the same terms and conditions as are applicable to the provision of like-kind services to other lands within the territorial boundaries of the municipality.

Section 3: Upon annexation, all improved properties located within the annexation territory will be furnished potable water at rates established by general Ordinance for in-city consumers purchasing like quantities in accordance with the following schedule:

- A. Uninterrupted service will be maintained to properties that are presently supplied with potable water from municipal mains. With respect to each customer, the rate change will take effect on the first day of the first full billing cycle commencing after completion of the annexation proceedings;
- B. Properties that are adjacent to an existing distribution main but not presently supplied potable water from the municipal distribution system will be required to connect to the distribution system within 30 days following annexation. All necessary connections shall be installed in conformity with general regulations and at the consumer's expense. Potable water will be supplied to such properties upon inspection and approval of the installed supply line;
- C. Properties not adjacent to an existing distribution main will not be furnished potable water until a public water main is extended across the frontage of the parcel to be served as required by general Ordinance. The cost to design and install any required main extension will be subject to assessment in accordance with general law. Necessary connections to the extended main shall be installed in conformity with general regulations and at the consumer's expense. Potable water will be supplied to such properties upon inspection and approval of the installed supply line.

Section 4: Upon annexation, all improved properties located within the annexation territory will be furnished sewerage and drainage services in accordance with general regulations and at rates established by Ordinance for the collection, treatment and disposal of like-kind waters generated within the City, provided, however, that annexation shall not relieve any property of any obligation to pay such additional sums as have been or may be levied by the Board of County Commissioners of Defiance County, Ohio, to recover capital investments made to install collection facilities or to service debt incurred by reason of such investments. Sewerage and drainage services will be provided in accordance with the following schedule:

- A. Uninterrupted sewer service will be maintained to properties that are presently discharging waste water to public sewers. The rate change shall take effect on the first day of the first full billing cycle commencing after completion of the annexation proceedings;
- B. Properties adjacent to existing sewer or storm water drainage facilities but not discharging water to the public collection system(s) will be required to connect to accessible sewerage and storm water facilities within 30 days following annexation. Necessary connections shall be installed in conformity with general regulations and at the consumer's expense. Collection and disposal services will be

furnished to such properties upon inspection and approval of the installed connections;

- C. Properties that are not adjacent to an existing public sewer or storm drain will not be furnished waste water collection, treatment or disposal services until a collection main is extended across the frontage of the parcel to be served as required by general Ordinance. The cost to design and install required extensions of public sewers and drainage facilities will be subject to assessment in accordance with general law. Necessary connections to extended mains shall be installed in conformity with general regulations and at the consumer's expense. Collection and disposal services will be furnished to such properties upon inspection and approval of the installed connections.

Section 5: All newly annexed properties supplied with potable water pursuant to Section 3 will be subject to inspection to verify compliance with applicable provisions of the Ohio Basic Building Code, Ohio Residential Code, EPA Regulations, Ohio Fire Code, general Ordinances and other general laws pertaining to:

- (1) elimination of potential cross-connections between the municipal water distribution system and existing facilities for the distribution of water supplied from other sources;
- (2) collection and disposal of waste water;
- (3) fire detection and suppression; and,
- (4) property maintenance.

Deficiencies shall be remedied at the property owner's expense within a reasonable period following inspection as determined in accordance with the applicable regulation.

Section 6: In the event any existing street within the annexation territory is found to be constructed to a lesser standard than is required by municipal subdivision regulations in effect on the date of annexation and such street is later improved to municipal standards, the cost of such improvements shall be subject to assessment in accordance with general law.

Section 7: In the event any land within the annexation territory described by the Petition is accorded a municipal zoning designation that permits the land to be used in a manner that is clearly incompatible with the uses permitted by township zoning of adjacent lands, Council will provide for the establishment of a buffer conforming to the requirements of Ohio Revised Code Section 709.23(C) in the Ordinance establishing the municipal zoning district.

Section 8: It is found and determined that all legislative actions pertaining to the adoption of this Resolution and all deliberations that affected or influenced all such legislative acts, including all deliberations in Committee, were conducted in Public Session duly convened in accordance with law.

Section 9: This Resolution shall be effective on the earliest date permitted by law.

Passed: February 18, 2014

Mike McCann  
President of Council

Votes Approving Adoption: 7

Votes Opposing Adoption: 0

Attest: Lisa Elders, Clerk

Approved: February 18, 2014

Bob Armstrong  
Mayor