

RECORD OF ORDINANCES

Dayton Legal Blank Co. 10114

Ordinance No. 1982-08

Passed FAILED 19__

AN ORDINANCE AMENDING ORDINANCE #33.013 OF THE CODE OF ORDINANCES OF THE MUNICIPALITY OF BROOKVILLE, OHIO BY REMOVING THE RESIDENCY REQUIREMENT CONTAINED THEREIN.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE MUNICIPALITY OF BROOKVILLE, OHIO THAT:

SECTION I:

Ordinance #33.013 of the Code of Ordinances of the Municipality of Brookville, Ohio shall be amended by deleting any and all reference to a residency requirement for Auxiliary Police Officers, specifically by deleting Section B contained therein and the Ordinance shall now amend to read as follows:

Each Auxiliary Police Officer shall be subject to the same rules and regulations as regular Police Officers.

SECTION II:

This Ordinance shall revoke and rescind all ordinances, parts of ordinances, resolution and parts of resolutions that are in conflict herewith and shall be enforced from and after the earliest period allowed by law.

Passed this ____ day of _____, 19__.

MAYOR

CLERK

CERTIFICATE

The undersigned, Clerk of the Municipality of Brookville, Ohio does hereby certify that the foregoing is a true and correct copy of Ordinance No. 1982-08 passed by the Council of said Municipality on the ____ day of _____, 1982.

E. Eugene Roeser, Clerk

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CERTIFICATION OF POSTING

The undersigned, Clerk of Council of the Municipality of Brookville, Ohio, hereby certifies that the foregoing Ordinance No. 1982-08 was posted at the Municipal Building, U. S. Post Office and the Brookville National Bank, Brookville, Ohio on the _____ day of _____, 1982 to the _____ day of _____, 1982 both days inclusive.

E. Eugene Roeser, Clerk

MEMORANDUM

TO: Council

FROM: Law Director

DATE: July 20, 1982

RE: What are the necessary number of votes required for an Ordinance or Resolution to be passed by Council; what is the effect of a vote on a Ordinance and/or Resolution whereby there is a majority in favor of the passage of an Ordinance or Resolution, but the majority vote is not the requisite number of votes needed to effect passage.

OPINION: The Ohio Revised Code provides that the passage of Ordinances and Resolutions require that such an Ordinance or Resolution be read on three different days and that the vote on the passage of the Ordinance shall be taken by yeas and nays and that such an Ordinance or Resolution shall be passed by a vote of at least a majority of all of the members of the legislative authority. Since the creation and passage of the Charter of the Municipality of Brookville, Ohio, Section 731.17 of the Ohio Revised Code no longer specifically applies to the Municipality of Brookville.

Section 4.04 and 4.05 of the Municipal Charter of the Municipality of Brookville, Ohio, are now the controlling statutes with respect to the passage of Ordinances and Resolutions for the Municipality. They are, however, almost identical to Section 731.17 of the Ohio Revised Code.

Section 4.04 of the Municipal Charter provides that each Ordinance and Resolution shall be read by title only, on three separate days, unless this requirement would be dispensed with by the Council. Section 4.05 of the Municipal Charter provides that no Ordinance or Resolution or Motion shall be passed without concurrence by a majority vote of the members of Council.

Since the Charter and the Ohio Revised Code are very similar with respect to the passage of various Ordinances and Resolutions, it would appear that the case law effecting the Ohio Revised Code could also be determined to effecting the Brookville Municipal Charter. As such, it would appear that if Council consist of seven members, four members must approve an Ordinance or Resolution prior to it being passed. Thus, without at least four votes favoring the passage, certain Ordinance or Resolution, the Ordinance or Resolution being voted upon is not considered to have passed.

The next question that is presented it, "What occurs in the event of either a tie vote whereby there is only three votes favoring passage of a particular Ordinance or Resolution and two or less votes rejecting the passage of such an Ordinance or Resolution?"

The Charter is silent with respect to this particular issue. The Code of Ordinances of the Municipality of Brookville as well as the Ohio Revised Code are also silent with respect to this particular issue. We are therefore forced to present an interpretation of the Charter with respect to an issue where the law appears to be silent.

It is the common practice of the Council of the Municipality of Brookville, Ohio, that in the event that an Ordinance not passed within three separate days as provided in Section 4.04 of the Municipal Charter of the Ordinances held to have not passed. According to past practices, it is necessary after this period of time to reintroduce the Ordinance for an additional three readings. Since it is necessary to have four votes where there are seven members of Council, prior to the passage of such an Ordinance or Resolution, it would appear that the Ordinance is considered failed in the event the Ordinance or Resolution has not passed by the end of the third reading.

A conservative reading therefore of the Charter, which in my opinion is required when there is an absence of any other legal source, would indicate that such an Ordinance or Resolution, if it fails to obtain the minimal four votes required by the Charter by the third reading, is not considered passed and is therefore considered failed and the Ordinance process must begin anew.

It should be noted for information only, that had a sixth Council member been present at the vote and should he have abstained from voting on that Ordinance, the Ordinance at that time would have been considered to have been passed according to the Ohio Attorney General Office as well as various case law. In that event, the Ordinance would have been considered to have passed.

Since the Charter is silent with respect to this particular issue, it is recommended to Council to clarify the Charter by passage of rules of Council as authorized by the Charter. This issue could then be dealt with legitimately according to the wishes of Council.

Respectfully submitted,


Gary E. Zuhl
Law Director

GEZ:jw