CITY OF FAIRBORN
COUNCIL WORK SESSION
May 18, 2026, at 5:00 p.m.
Fire Training Room

COUNCIL MEMBERS	Present	Absent
Dan Kirkpatrick, Mayor	☒	☐
Clint Allen, Councilman	☒	☐
Sylvia Chess, Councilwoman	☐	☒
Brian Dodd, Councilman	☒	☐
Rodney McCubbins, Deputy Mayor	☒	☐
Mary Reaster, Councilwoman	☒	☐
Tana Stanton, Councilwoman	☒	☐

Deputy Mayor McCubbins motioned to excuse Councilwoman Chess from the work session. Councilman Allen seconded. Voice Vote. Motion carried. Mayor Kirkpatrick excused Councilwoman Chess from the meeting. Mayor Kirkpatrick announced that Councilwoman Chess would be in attendance at the Council Meeting.

STAFF MEMBERS PRESENT

Bertles, Gebhart, McClure, McDowell, McNamee, Peterangelo, Regelski, Schell, and Taylor.

Mike Gebhart, City Manager, stated there would be two topics for the work session. The continuation of the Rules of Council from the last meeting and the moratorium discussion which initially started with Deputy Mayor McCubbin's request to discuss. Then there will be Council Comments from 5:40 to 5:50 p.m.

COUNCIL RULES HANDBOOK PROPOSED UPDATES

Mike Gebhart, City Manager, explained he sent everyone an email last week with what he believed to be the updates to the sections they discussed in the proposed changes for Rules of Council and added a flow chart into each of them that could be put into the document also. He asked if there were any comments, concerns, additions, deletions, or questions. He asked if everyone was good with the changes and should they move them on to the next meeting or within the next month.

Councilman Dodd stated when he read through it Mr. Gebhart had answered all the questions that they had at the work session and Councilman Dodd approved of them.

Councilwoman Stanton stated it looked great.

Councilman Allen stated there were no issues.

Mr. Gebhart asked if the flowcharts helped or made it more confusing. Councilwoman Stanton stated there are people who like words and those that like flowcharts, so it was good that both were included. Mayor Kirkpatrick agreed the flowchart worked well.

Councilwoman Reaster asked if they are going to utilize the Calendar suggestion. She lives by her calendar and believes that it would keep them all on task. Council agreed. Robin McClure, HR Director, agreed. Mr. Gebhart stated he would put those on the June 1, 2026, meeting as a Resolution. Councilman Dodd stated then that takes affect this year. Mr. Gebhart stated the Resolution takes affect immediately.

Mr. Gebhart reviewed the future work session topics:

June 1 – Janel Regelski will do the quarterly finance update.
Firefighter EMT paygrade allocation list addition.

June 15 – ADA requirements for the website – Emily Gay, Communications Director will present on the things we will be doing over the next year to get ready for ADA compliance.

July 6 – Ben Roman, Police Chief, will discuss Motorola and Brinc's public safety drone. Four-year contract with the first year being free. At day 365 it could be sent back with no questions asked. This drone can be anywhere in the City within 70 seconds. It is primary to Police, but it could carry Narcan or even a life vest if someone is in the river. It has a lot of functions. It will assist Fire as well.

July 20- Five Rivers YMCA discussion. He believes Council will be impressed when they see the Five Rivers facility. They want to come to Fairborn whether it is partnered with the YMCA or standalone. Their Board has already cleared Fairborn as their next location.

August 10 – Capital Budget

September 7 – Quarterly Finance Update

September 21 – Open

October 12 – 2027 Budget

If someone would like to get something in, they will try to fit it in. Councilwoman Stanton stated in the FEAB meeting he mentioned that it would take 90 days or so to do the process of appointing the Tree Board. Mr. Gebhart stated he needs to work with Mr. McNamee and work through what the legislation will look like to create the Tree Board. Once he has something he will come back at the next work session and brief them on that. They did get information from Miami County Soil and Water on the seedling/sapling tree sale they do. That is a great initiative they do in Miami County and other communities. Councilwoman Reaster stated Joey Peterson in town just did one. Where he took donations and grabbed a bunch of native saplings. Mr. Gebhart stated he would follow up with everyone on Tree City at the next work session.

Mayor Kirkpatrick stated with the drone there are still restrictions because of the Base, correct? Mr. Gebhart stated he would let Ben Roman and the sales representative follow up on that. Deputy Mayor McCubbins stated when he went through the Police Academy

and they did their briefing from the drone guy they mentioned we have a good relationship with the Base.

MORATORIUM DISCUSSION

Mike McNamee, City Solicitor discussed temporary land use moratoriums and interim zoning controls, legal authority, limitations, and applications.

Tonight's presentation addresses the City's authority to impose temporary land use moratoriums or interim zoning codes under Ohio law.

A moratorium is a temporary pause button. It is not long lasting and the purpose of a moratorium in the zoning world is to pass regulations that are necessary to control public health, safety, and welfare. That imposes your right as a Charter City to do what you think is best. One of the keys before we impose a moratorium is to document, document, document. What do we need to impose a moratorium? Can we just do like we did with marijuana and not do any study and propose a moratorium? Sure, we can because the marijuana moratorium was a one off in the moratorium world. A substance that was previously illegal was now legal and State law allowed us to go ahead and entirely ban the sale of marijuana within our borders if we wanted to. We can't compare the marijuana moratorium to what we need for the high intensity uses such as data centers, vape shops, car washes, etc.

Why would we want to impose moratoriums? The types of uses described are about public health and welfare. Data centers drain a lot of juice and use water and sewer. The purpose of Mr. McNamee's presentation was not to recommend a specific moratorium, but rather to explain what authority municipalities possess, constitutional limits and what legal considerations become important if they ever do determine to pass a moratorium.

The purpose of the interim controls is to provide time to study the emerging land uses. They can't wait until a data center comes in and applies, because if our Zoning Code seems to suggest that is a permitted use, either implicit or explicitly it is too late. It is to prevent incompatible development before stands are updated, address documented infrastructure concerns, coordinate planning, and utilities. Is the use incompatible with the surrounding area? What type of planning do we need to do to avoid piece mill or inconsistent development?

The City's power comes from their home-rule authority. As a general proposition because we have home-rule authority courts when looking at moratoriums or Zoning regulations in general it is presumed that what we do is correct as long as it relates to a legitimate public purpose, is supported by factual findings and applied reasonably and uniformly. Other factors Ohio courts look at is regulate land use, health, safety, welfare, infrastructure, and compatibility between uses.

A moratorium is most defensible when it is temporary and prospectively applied. Some communities will try to make it retroactive and that is a violation of the US Constitution. It has to be applied uniformly across the board. They can't just pick out a particular applicant and try to shut down a particular project. That is why it is important to plan ahead and adopted through proper procedures, meaning the legislative process.

It is somewhat indefensible when it is indefinite in duration, not defensible if it is retroactively applied, not defensible when targeted to a specific owner or project, unsupported by factual findings, adopted without proper public process-legislation, and unrelated to actual infrastructure or planning concerns. He spoke about a recent moratorium in German Township where they passed a moratorium on mining.

If the zoning seems to allow the permitted use and an application has been completed it is too late to file a moratorium. The safest approach is to enact interim control prospectively.

He discussed data centers and different types of infrastructure. They have been extremely litigated in the past 12-18 months and that trend is going to continue. Ohio has had a lot of activity within data centers. The problem with data centers is the large electrical demand, continuous water usage, large backup generator systems, having access to electricity 24/7 365 days a year. There is a lot of gas-powered electric generation basically on site which contributes to the noise. Noise of cooling systems and emergency services coordination are also concerns. There is a well-defined citizens group throughout the country attacking data centers each and every step of the way.

As to Fairborn's particular situation he is not sure that the City has real property available for data centers. If we are going to consider that we should take a look at what our vacant land is and where a data center might actually locate. Mayor Kirkpatrick asked if data centers provide a lot of employment. Mr. McNamee responded, not really what happens is once they are operating a 300-to-500-acre data center, it is probably in the zone of 60 employees. Those are high-paid employees but compared to the resources that they consume they are not a high employer.

Mr. McNamee discussed other emerging uses are vape shops, spacing requirements, numerical caps, and concentration concerns. The City is no stranger to gas stations and car washes. These create traffic concerns or an intensity storm water concern as they are 24-hour operations. There are also state laws regarding mining which almost precludes any type of moratorium or not approving an aggregate facility.

What are our best practices? If we do want to do a moratorium let's examine the industry that we are looking at. The basis why, look at our comprehensive land use plan, do a lot of staff work and if after staff run through it, if we think we need expert consultants maybe do that. He does not think we would. It is important that the City takes the right measures and Council decide what, if any, moratoriums the City might need.

Councilman Dodd asked if there can be a time limit on a moratorium? Mr. McNamee stated the rule of thumb is when you initially pass a moratorium, which is the time you do the study period. So, you can target the potential use, have in the legislation where you pass the moratorium indicate the basis of why they think the use might not be compatible with our City and then commission a study to move forward. If the study indicates that the moratorium needs to be extended or in the interim you come up with regulatory control from a zoning perspective of what you need to regulate the use that you are targeting, then just go ahead and pass that in continuance. The direct answer 6 months, do your homework, extend if you think necessary, or pass the regulations. Councilman Dodd

asked if the moratorium can be extended numerous times? Mr. McNamee stated as long as you have the data to support it.

Councilwoman Stanton asked in the past didn't we have a moratorium about Bitcoin. She remembers she voted on something about it, but she can't remember if it was the length of time. Mr. Gebhart asked if she was talking about data centers. They had a moratorium for a limited time, and it has expired, He would have to double check on that, but he thinks they had a 6-month moratorium. She asked if staff did research. Mr. Gebhart stated it takes massive amounts of acreage to do this, and we don't really have any acreage. The City is almost completely built out except what is along Spangler Road, and he does not think on Spangler Road he is not sure we have 150 acres. Everything he has seen is 300 plus acres for a data center. He does hear a lot of the companies say it is mandatory that the water system recycle itself and they bring their own power plants with them now. He thinks the industry is adapting, but we don't have the acreage in the City. He thinks that is one of the findings with Bitcoin mining. They thought it was specific to that it could be put in a multi-story building and that is not the case. He thinks it was Mike Mayer who designed that legislation and he believes it was six months. Mike McNamee stated Bit coin is similar to data centers in consumption of water and power. He would suspect that is what drove the process.

Mayor Kirkpatrick asked if historically the City has had any long-term standing moratoriums for a certain type of business. Mr. Gebhart stated just when marijuana was legalized. Other than the six months that we did Bitcoin mining he does not remember them having any. Mayor Kirkpatrick asked about strip clubs. Mike Gebhart, City Manager, stated the Supreme Court came out with a ruling decades ago which said you cannot zone out a business like that. There must be some property in your City that is available for that. Most communities went to light industrial to do that. In theory it is a conditional use in the City for that. Mayor Kirkpatrick stated the City does not have any, was there a moratorium that kept that from happening. Mr. Gebhart responded he did not think so. Mr. McNamee said it is a Supreme Court decision you cannot do that.

Councilman Allen thinks the essence of this is if they move to put a moratorium in place of something, whatever it is, whether it is gas stations, car washes, data centers, we should be tying in some type of study or research group to make sure we have traction on answers so it can be analyzed. Mr. McNamee agreed they would start with the Department of Development and Zoning and Legal and take it from there. Councilman Allen stated coming out of that there would be footing to say whether it is through the Zoning Code or some other legal guidance what they can legally live with.

Deputy Mayor McCubbins stated the two things that sparked his interest in this moratorium discussion were trying to avoid repeating very bad historical precedents. The two examples he can think of are the biodigester and the second one was what we don't know, we don't know, so tobacco use was not known when it was very prevalent the dangers of tobacco use. Now you can buy a cigarette anywhere. They keep him in business, so he should not complain because they keep him in a job. His thought on the vape shops went to exactly that. We have an opportunity now to stay ahead of it and prevent what is happening in his neighborhood. He has at least six within a mile of his home and they are all probably within half a mile of each other, right next to a school. As a medical professional he knows what vaping does. It is very bad. How do we fix that? How do we stop every single store in the City of Fairborn from selling vape? Mayor

Kirkpatrick asked, "can we"? Deputy Mayor McCubbins believes they can and he thinks they should. Councilman Allen thinks they have to study it and take the emotion out of it. So that they are talking through these are the pros and cons. This is how we can maneuver ourselves to better position ourselves. Having a vape shop is not illegal. Deputy Mayor McCubbins would like to avoid having it in every corner that you turn. Alcohol is the same way. Everywhere you turn there is alcohol. We all know what alcohol and cigarettes do. Not saying that you can't use them, but should it be available as a wide market as it is. Mr. McNamee stated with the proximity to the schools as an example. As a council they are concerned about the health and welfare of the citizens, and he thinks this is a perfect example.

Deputy Mayor McCubbins discussed his concern on the aquifer regarding data centers. We are not in a drought zone, so he believes we are ok, but less than 20 percent of the water that they pull out of there is reclaimed. It would be a big draw on our aquifer to have a data center. Mayor Kirkpatrick asked if universities draw data centers with their research programs that they do? Have there been any studies of that? Mr. McNamee stated data centers' main draws are the human resources, the physical plant for electric and water and land.

Mike McNamee, City Solicitor, stated if they want to consider a moratorium, they must evaluate their infrastructure concerns, review current Zoning Code gaps, consider a study commission or consulting process, and develop the permanent standards.

Mayor Kirkpatrick stated it is good they are discussing this now versus being reactionary. Mr. McNamee stated it is up to council, maybe they should consider another work session if they want to pursue any moratoriums. He has covered the basics.

Councilwoman Stanton is curious how you make a case for the vaping. Deputy Mayor McCubbins thinks it is worth starting a conversation with the Greene County Public Health Department. Mr. McNamee stated he could make a first cut also to see what other communities have tried nationwide. Mayor Kirkpatrick stated for vaping in particular. Mike Gebhart, City Manager, still thinks the market drives this and a business will either evolve or go out of business.

Mike Gebhart, City Manager, welcomed Meredith McDowell, who is a part of the Neighborhood Betterment Division. She just graduated with her associate's degree and is working through her bachelor's degree. He congratulated her and welcomed her.

COUNCIL COMMENTS

Councilman Dodd welcomed Meredith. He thinks as a Council they need to think about moratoriums and certain ones that they think are relevant. He thinks tonight's discussion was a good starting point.

Councilwoman Stanton agreed.

Councilman Allen appreciated the dialogue.

ADJOURNMENT

Councilman Dodd moved to adjourn the meeting. Councilman Dodd seconded. Yeas, six; Dodd, Reaster, Allen, McCubbins, Stanton and Kirkpatrick. Nays, none. Motion carried. The meeting was adjourned at 5:46 p.m.

MAYOR

CLERK, CITY OF FAIRBORN