

THE CITY OF SOUTH EUCLID SCHEDULE OF MEETING

February 11, 2013
8:00 PM

1. PLEDGE OF ALLEGIANCE

2. ROLL CALL

3. APPROVAL OF MINUTES: September 24, 2012 (recovered), October 9, 2012 (recovered), October 22, 2012 (recovered)

4. OPEN MEETING

5. LEGISLATION FOR REMOVAL FROM COUNCIL DOCKET

1. RESOLUTION 37-12 WITHDRAWING AN OBJECTION REGISTERED WITH THE OHIO DEPARTMENT OF COMMERCE DIVISION OF LIQUOR CONTROL CONCERNING THE RENEWAL OF THE LIQUOR PERMIT BELONGING TO TINO'S LOUNGE IN THE CITY OF SOUTH EUCLID, OHIO. **FOR REMOVAL.**

6. REPORT OF COMMITTEES

SAFETY COMMITTEE:

1. ORDINANCE 26-12 CREATING NEW SECTION 337.32 "DISTURBING THE PEACE; EXCESSIVE SOUND VOLUME" OF CHAPTER 337 "SAFETY AND EQUIPMENT" OF TITLE FIVE "VEHICLES" OF PART THREE "TRAFFIC CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO. **SECOND READING.**

2. ORDINANCE 27-12 AMENDING SECTION 531.09 "ABATEMENT OF CRIMINAL ACTIVITY NUISANCES" OF CHAPTER 531 "NUISANCES" OF PART FIVE "GENERAL OFFENSES CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO. **SECOND READING.**

7. MAYOR'S REPORT

8. LEGISLATION REQUESTED BY THE MAYOR AND ADMINISTRATION

1. RESOLUTION 07-13 AUTHORIZING THE CUYAHOGA COUNTY BOARD OF HEALTH TO SUBMIT AN APPLICATION FOR THE SAFE ROUTES TO SCHOOL PROGRAM ON BEHALF OF THE CITY OF SOUTH EUCLID, A LOCAL PUBLIC AGENCY. FIRST READING.

2. RESOLUTION 08-13 STRONGLY OPPOSING THE PASSAGE OF HB 5 BY THE OHIO GENERAL ASSEMBLY WHICH PROPOSES UNIFORMITY MEASURES FOR MUNICIPAL INCOME TAX IN THE FORM OF UNFUNDED MANDATES AND A SUBSTANTIAL LOSS OF REVENUE; AND DECLARING AN EMERGENCY. FIRST READING.

9. LAW DIRECTOR'S REPORT

10. LETTERS AND COMMUNICATIONS

11. ADJOURN TO EXECUTIVE SESSION TO DISCUSS PENDING LITIGATION

12. ADJOURN

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 26-12
INTRODUCED BY: Miller
REQUESTED BY: Mayor

September 24, 2012
Second Reading: February 11, 2013

AN ORDINANCE

CREATING NEW SECTION 337.32 "DISTURBING THE PEACE; EXCESSIVE SOUND VOLUME" OF CHAPTER 337 "SAFETY AND EQUIPMENT" OF TITLE FIVE "VEHICLES" OF PART THREE "TRAFFIC CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO.

WHEREAS, the Council of the City of South Euclid can protect the health, safety, and welfare of its residents by preventing disturbances of the peace.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1: That Section 337.32 "Disturbing the Peace; Excessive Sound Volume" of Chapter 337 "Safety and Equipment" of Title Five "Vehicles" of Part Three "Traffic Code" of the Codified Ordinances of the City of South Euclid, Ohio be hereby created to read as follows:

337.32 DISTURBING THE PEACE; EXCESSIVE SOUND VOLUME.

(a) No person shall use, operate or play upon any public road, street or highway in this Municipality, any radio, music player, tape cassette, disc player, television or audio system in a motor vehicle, at such a volume so as to disturb the peace, quiet, comfort or repose of others, within the City, or at any time with louder volume than is necessary for the convenient hearing of the person or persons who are in the vehicle in which such device is operating and who are voluntary listeners thereto. The operation of any such device in such manner as to be plainly audible to person or persons other than the occupants of said vehicle shall be prima-facie evidence of a violation of this section.

(b) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety and for further reason that disturbances of the peace must be prevented. Wherefore, this Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, ~~2012~~ 2013.

David B. Miller, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 27-12
INTRODUCED BY: Miller
REQUESTED BY: Mayor

September 24, 2012
Second Reading: February 11, 2013

AN ORDINANCE

AMENDING SECTION 531.09 "ABATEMENT OF CRIMINAL ACTIVITY NUISANCES" OF CHAPTER 531 "NUISANCES" OF PART FIVE "GENERAL OFFENSES CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO.

WHEREAS, the Council of the City of South Euclid recognizes the need to promote, protect, and improve the health, safety, and welfare of the residents; and

WHEREAS, the City can protect the health, safety, and welfare of its residents by abating criminal activity on properties found to be a nuisance.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1: That Section 531.09 "Abatement of Criminal Activity Nuisances" of Chapter 531 "Nuisances" of Part Five "General Offenses Code" of the Codified Ordinances of the City of South Euclid, Ohio be hereby amended to read as follows:

531.09 ABATEMENT OF CRIMINAL ACTIVITY NUISANCES.

(a) The following activities occurring on **either** residential or commercial properties, **or within one thousand (1,000) feet of the property line of said residential or commercial property**, and engaged in by an owner, occupant or invitee of the owner or occupant of such residential or commercial properties, are hereby declared to be public nuisances.

(1) Any animal violations under Sections 505.01, Dogs and Other Animals Running at Large; Dangerous and Vicious Dogs; 505.09, Barking or Howling Dogs; 505.06, Poisoning Animals; 505.07, Cruelty to Animals; 505.071, Neglect of Animals; 505.08, Noxious Odors; Unsanitary Conditions;

(2) Any disorderly conduct, disturbance of the peace or other violation of Chapter 509 of the Codified Ordinances;

(3) Any drug abuse violation under Chapter 513 of the Codified Ordinances;

(4) Any gambling violation under Chapter 517 of the Codified Ordinances;

(5) Any health, safety or sanitation violation under Chapter 521 of the Codified Ordinances;

(6) Any obstruction of official business violation under Section 525.07 of the Codified Ordinances;

(7) Any alcohol violations under Chapter 529 of the Codified Ordinances;

(8) Any sex offenses under Sections 533.07, Public Indecency; 533.08, Procuring; 533.09, Soliciting; or 533.10, Prostitution, of the Codified Ordinances;

(9) Any offense against another person under Chapter 537 of the Codified Ordinances;

(10) Any offense against property under Sections 541.03, Criminal Damaging or Endangering; 541.04, Criminal Mischief, of the Codified Ordinances;

(11) Any littering or deposition of waste under Chapter 527 of the Codified Ordinances;

(12) Any theft violation under Sections 545.05, Petty Theft; 545.08, Unauthorized Use Property, of the Codified Ordinances;

(13) Any weapons, explosives, firearm or handgun violation under Chapter 549 of the Codified Ordinances;

(14) Any fireworks violation under Chapter 1540 of the Codified Ordinances;

(15) Any waste container violation under Section 1411.081 of the Codified Ordinances; and

(16) Any offense that is a felony under the Ohio Revised Code.

(b) The Chief of Police or his designee, upon finding that two or more nuisance activities declared in this section have occurred within any 12-month period, may cause a written notice and order to be served on the owner of the property declaring that such property is a nuisance property. The notice and order shall set forth the nature of the nuisances, the estimated costs to abate any future nuisances, and state that the owner may avoid being charged the costs of abatement by taking steps to prevent any further nuisance activity as set forth in this section. The notice shall further state that if a third or subsequent nuisance activity as declared in this section occurs within 12 months of the written notice, the City may abate the nuisance by responding to the activities using administrative and law enforcement actions, and the costs of such abatement shall be assessed on the nuisance property. Notice shall be served as set forth in Sections 531.02 and 531.03 of the Codified Ordinances.

(c) If within 12 months after the written notice referred to in division (b) of this section has occurred, a third nuisance activity as declared in this section occurs, the City may abate the nuisance by responding to the activity using administrative and law enforcement actions, and the costs of such abatement shall be assessed on the nuisance property in the same manner as in Section 531.04 of the Codified Ordinances, and the costs shall be calculated as set forth in division (e) of this section. The City shall provide notice to the owner of the nuisance property of the City's intent to assess the costs of abatement against the owner's property at least 30 days before such costs are certified to the County for assessment against the property, and such notice shall contain a description of the nuisance activity that is the basis for the notice of intent to assess the property, and the cost to abate. Notice shall be served as set forth in Section 531.03 of the Codified Ordinances.

(d) The owner of a nuisance property who receives a notice from the Chief of Police or his designee pursuant to this section may appeal such notice by submitting a written request for reconsideration to the Chief of Police within 30 days of the date of the notice. If the Chief of Police finds that the facts presented do not support the declaration of a nuisance, the Chief shall rescind the notice. Otherwise, the Chief shall deny the request and refer the appeal for hearing by the Board of Zoning Appeals. Any such appeal shall not stay any actions by the City to abate the first or any subsequent nuisance activity. In any such appeal, the City must show by a preponderance of the evidence that each violation stated in the notice being appealed has occurred, and that the declaration of the property as a nuisance property or of the intent of the City to assess the property for abatement costs, whichever is applicable, is justified. The City shall be deemed to have failed to have met this standard if the owner demonstrates by a preponderance of evidence that:

(1) He or she was not the owner at the time of any of the nuisance activity that is the basis of the notice; or

(2) He or she had knowledge of the nuisance activity, but has promptly and vigorously taken all actions necessary to abate each nuisance including, without limitation, compliance with the requirements of Ohio R.C. 5321.17(C) and 5321.04(A)(9); or

(3) He or she had knowledge of the nuisance activity and could not, with reasonable care and diligence, have known of the nuisance activity; and upon receipt of the notice of the declaration of the property as a nuisance property, he or she promptly took all actions necessary to abate the nuisance including, without limitation, compliance with the requirements of Ohio R.C. 5321.17(C) and 5321.04(A)(9).

(e) Costs of abatement shall be assessed based upon an escalating defined cost. The escalating defined costs are: two hundred and fifty (\$250) upon the first declaration of nuisance under this chapter; five hundred dollars (\$500) on the second nuisance declaration; seven hundred fifty dollars (\$750) on the third nuisance declaration; and one thousand dollars (\$1,000) on each subsequent nuisance declaration.

(f) The declaration of a nuisance property, an order to abate a nuisance, or the assessment of costs by the City on a property, do not affect or limit the City's right or authority to bring criminal prosecution or other legal action against any person for violation of the City's ordinances.

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety and for further reason that the City must be able to abate instances of criminal activity on properties which have been declared a nuisance. Wherefore, this Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2012 **2013**.

David B. Miller, President of Council

Approved:

Georgine Welo, Mayor

Attest:

Keith A. Benjamin, Clerk of Council

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 07-13
INTRODUCED BY: Miller
REQUESTED BY: Mayor

February 11, 2013

A RESOLUTION

AUTHORIZING THE CUYAHOGA COUNTY BOARD OF HEALTH TO SUBMIT AN APPLICATION FOR THE SAFE ROUTES TO SCHOOL PROGRAM ON BEHALF OF THE CITY OF SOUTH EUCLID, A LOCAL PUBLIC AGENCY (LPA).

WHEREAS, the United States Congress has set aside monies for Safe Routes to School Projects through the State of Ohio, Department of Transportation; and

WHEREAS, LPAs, such as the City of South Euclid, can apply for these monies and be selected for funding by the State of Ohio, Department of Transportation; and

WHEREAS, the City of South Euclid will work closely with the South Euclid-Lyndhurst City Schools to improve student safety as children go to and from school and is a transportation activity eligible to receive federal funding.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of South Euclid, Ohio:

Section 1: That the Cuyahoga County Board of Health, contractual agent of the City of South Euclid is hereby empowered on behalf of the City of South Euclid to prepare and execute an application for SRTS funds for the stated described project and to submit same to the State of Ohio, Department of Transportation.

Section 2: That the total cost of the project is estimated to be \$331,000, of which the City of South Euclid, as the LPA, if awarded the funds, further agrees to pay One Hundred Percent (100%) of the construction cost over and above the maximum amount provided by the State of Ohio, Department of Transportation.

Section 3: That upon completion of the described Project, and unless otherwise agreed, the City of South Euclid, as the LPA shall: (1) provide adequate maintenance for the described Project in accordance with all applicable state and federal laws, including, but not limited to, 23 USC 116; (2) provide ample financial provisions, as necessary, for the maintenance of the described Project; (3) if necessary, maintain the right-of-way, keeping it free of obstructions; and (4) if necessary, hold said right-of-way inviolate for public highway purposes.

Section 4: If the application is approved for funding the Cuyahoga County Board of Health, Contractual Agent of the City of South Euclid is hereby empowered on behalf of the City of South Euclid to enter into a contract with the Director of the Ohio Department of Transportation necessary to complete the above described project.

Section 5: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 6: That this Resolution is hereby declared to be an emergency measure necessary to be in force immediately upon its passage to meet the Safe Routes to School application deadline. Wherefore, this Resolution shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2013.

David B. Miller, President of Council

Approved:

Georgine Welo, Mayor

Attest:

Keith A. Benjamin, Clerk of Council

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 08-13
INTRODUCED BY: Miller
REQUESTED BY: Mayor

February 11, 2013

A RESOLUTION

STRONGLY OPPOSING THE PASSAGE OF HB 5 BY THE OHIO GENERAL ASSEMBLY WHICH PROPOSES UNIFORMITY MEASURES FOR MUNICIPAL INCOME TAX IN THE FORM OF UNFUNDED MANDATES AND A SUBSTANTIAL LOSS OF REVENUE, AND DECLARING AN EMERGENCY.

WHEREAS, the Municipal Income Tax Uniformity Coalition, headed by the Ohio Society of CPA's, with business community membership including the Ohio Chamber of Commerce, with support from Representative Grossman, Representative Henne and Representative Barnes, met with members of the Ohio Municipal League and municipal income tax representatives; and

WHEREAS, the purpose of these Interested Parties meetings was to achieve consensus on issues regarding municipal income tax uniformity for the inclusion in legislation; and

WHEREAS, municipalities agree that revenue neutral uniformity on issues that will ease compliance burdens for businesses in and potentially locating in Ohio would be of great benefit to all of Ohio; and

WHEREAS, the Coalition has drafted and introduced language that is detrimental to the financial stability of municipalities, will drastically reduce revenue for all municipalities in Ohio, and includes "unfunded mandates" which will cripple the ability for municipalities to provide basic services to residents and resident businesses alike; and

WHEREAS, the recent reduction in the Local Government Fund has resulted in a loss of \$617,894 in yearly revenue for the City of South Euclid; and

WHEREAS, the elimination of the Estate Tax will result in a loss of an estimated \$500,000 in revenue for the City of South Euclid; and

WHEREAS, the unfunded mandates associated with the mandatory implementation of the Federal Patient Protection and Affordable Care Act (Obamacare) will result in an estimated yearly cost of over \$73,500 for the City of South Euclid, not including annual increases in health care costs; and

WHEREAS, the accelerated phase-out of promised reimbursement for the loss of revenues due to the repeal of the Tangible Personal Property Tax has resulted in a loss of \$2,200,000 in revenue for the South Euclid-Lyndhurst Schools and City; and

WHEREAS, the proposals in HB 5 will result in an additional estimated loss of revenue of \$170,702 for the City of South Euclid; and

WHEREAS, HB 5 includes provisions that require State oversight of municipal income tax administration, administrative policies and procedures for municipal income tax collection and administration that dramatically hamper the ability to administer the tax in an effective manner; and

WHEREAS, the obvious intended long term purpose of HB 5 is State oversight of municipal income tax operations, which could lead to a future push for forced State Centralized Collection of municipal income tax; and

WHEREAS, key pieces of this legislation are clearly an attempt to reduce municipal income tax obligations for businesses by reducing tax liabilities for businesses, which does not change the complexity or add simplicity to the process of filing and paying municipal income tax; and

WHEREAS, municipalities in Ohio, with the support of the Ohio Municipal League, have supported and participated in discussions of uniformity for the past thirteen years, and worked to achieve uniformity in many areas of municipal income tax; and

WHEREAS, each time that uniformity was challenged by a Special Interest group, carve-outs or changes to benefit Special Interests have been put in place by the Ohio General Assembly; and

WHEREAS, municipalities have been responsive in the past to efforts to streamline the rules and regulations and create uniformity in the overwhelming majority of local tax codes creating a streamlined process for all taxpayers; and

WHEREAS, only municipalities can and will provide the personal service and assistance to its taxpayers in the preparation and filing of their tax reports and returns; and

WHEREAS, only municipalities can ensure the prompt and proper auditing of local tax returns to ensure all applicable deductions and declarations are reported, thus also ensuring that all taxpayers pay their fair share without causing higher costs of compliance for all, and must be able to do so without burdensome and costly restrictions included in HB 5 created with the only purpose of restricting municipalities from correcting / auditing returns or making assessments; and

WHEREAS, only municipalities can and will aggressively pursue those non-compliant and delinquent taxpayers who, by their omission or deliberate deceit, drive up the costs of compliance to all; and

WHEREAS, provisions in this bill hamper every municipality's ability to audit and correct municipal income tax returns, to equitably enforce the municipal income tax laws, creates increased cost of administration due to burdensome notification requirements, reduces revenue due to "unfunded mandates" and elimination of compliance processes, and has been crafted as a vehicle to control the administrative process of municipal income tax to the benefit of specific taxpayer interests; and

WHEREAS, municipalities must fight to protect their single largest revenue source, which provides essential municipal services, promoting a positive quality of life that residents and businesses alike rely upon, and any forced reduction in this revenue will have a negative impact on residents and businesses, creating an environment detrimental to retaining and attracting business in Ohio.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of South Euclid, Ohio:

Section 1: That this Council does hereby declare its strong opposition to any effort by the Ohio General Assembly to pass legislation that creates "unfunded mandates" and a loss of revenue under the guise of municipal income tax uniformity.

Section 2: That this Council urges its state legislators to reject HB 5, and any amendment to pending bills and opposes the introduction of new legislation that proposes to reduce municipal income tax revenue to municipalities in Ohio.

Section 3: That the proposal by the bill Sponsors (Representative Grossman, Representative Henne) flies in the face of its own stated goals and objectives to achieve a consensus among Interested Parties to the municipal income tax issue, and clearly caters to the requests of the membership of the Coalition, which are all Special Interest Groups.

Section 4: That the Ohio General Assembly should request the drafting of legislation that would address the multitude of issues that were agreed upon as a result of the Interested Parties meetings, which will bring uniformity to areas including (but not limited to) due dates for estimated tax payments, due dates of withholding payments, due dates and procedures for extension request filings, due dates for annual Reconciliation of Returns, all of which will simplify the compliance process for businesses and individuals alike.

Section 5: That the Ohio General Assembly should focus on restoring previous funding levels to the Ohio Business Gateway and focus on correcting its multitude of programming problems and customer service issues to make that tool less cumbersome, more useful and relevant to municipalities, businesses, and individuals as a simple, generic, one-stop method of filing local business income tax returns in one location.

Section 6: That members of the Ohio House and Senate should engage in constructive dialogue with local officials to gain consensus on correction of the perceived issues of potential revenue-neutral commonality and uniformity in those few remaining differences in municipal income tax provisions.

Section 7: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 8: That this Resolution is deemed to be an emergency measure necessary for the immediate preservation of the peace, health, safety, and welfare of the residents and for the further reason that the City must maintain revenue levels without threat of assault via legislation proposed by the Ohio General Assembly. Wherefore, this Resolution shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2013

David B. Miller, Council President

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law