

ORDINANCE NO. 2004-84
Passed December 21, 2004

AN ORDINANCE REAFFIRMING AND AMENDING ORDINANCE NUMBER 2004-51 ENTITLED AN ORDINANCE DECLARING CERTAIN MUNICIPAL PROPERTY TO BE SURPLUS AND AUTHORIZING THE SALE OF SUCH PROPERTY IN ACCORDANCE WITH THE AGREEMENT ATTACHED HERETO AS EXHIBIT A AND DECLARING AN EMERGENCY

WHEREAS, Council had adopted Ordinance Number 2004-51 on October 12, 2004 and, pursuant to the terms of such Ordinance, and Agreement attached thereto, the contingency date set forth in such agreement was October 15, 2004, and,

WHEREAS, due to such contingency date, the contract had lapsed by its terms and, Council having determined that it desires to adopt an Amendment to such Ordinance, identical in terms to Ordinance Number 2004-51 except that the contingency date set forth therein shall be September 1, 2005, and otherwise reaffirm the terms and provisions of Ordinance Number 2004-51.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF POWELL, DELAWARE COUNTY, OHIO AS FOLLOWS:

Section 1: Council hereby authorizes the City Manager to execute a new agreement with GFS Chemical Company as set forth in Ordinance Number 2004-51 except that the contingency date set forth in such agreement shall be September 1, 2005.

Section 2: Council hereby reaffirms all of the terms and provisions of Ordinance 2004-51 not specifically modified herein. Council further authorizes the City Manager to execute such modified Exchange Agreement and such other documents consistent with the purpose and intent of this Ordinance as deemed appropriate by the Manager and as authorized by the Director of Law.

Section 3: Council further authorizes the Municipal manager to execute such documents as may be necessary upon the recommendation of the Director of Law for the City to intervene as a party in the pending suit in the Court of Common Please of Delaware County, Ohio styled as "The Board of Trustees of Liberty Township v. G Frederick Smith Chemical Company, et al. Defendants, Case Number 03CV-H-07-481" if necessary.

Section 4: That it is hereby found and determined that all formal actions of the Council concerning and relating to the passage of the ordinance were adopted in an open meeting of the Council and that all deliberations of the Council and any of the decision making bodies of the Municipality of Powell which resulted in such formal actions were in meeting so open to the public in compliance with all legal requirements of the Municipality of Powell, Delaware County, Ohio.

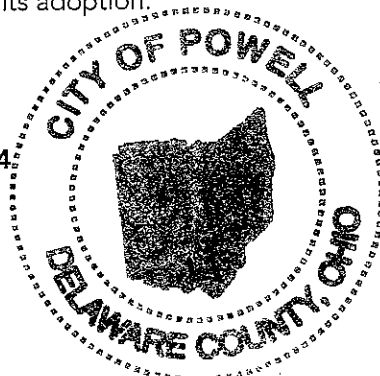
Section 5: Council hereby finds that an emergency exists necessitating the immediate implementation of this Ordinance, the necessity arising out of the fact that the attached agreement has numerous contingencies which must be resolved by or near the end of the year and immediate implementation of this agreement is therefore necessary. Council therefore determines that this Ordinance shall take effect upon its adoption.

Vote on Rule Suspension:

Y 7 N 0

Vote on Ordinance No. 2004-84

Y 7 N 0



This legislation has been posted in accordance with the City Charter on this date 4/1/05

Annaumen
Clerk of Council

Dan Wiencek 1/04/05
Dan Wiencek
President of Council

Dawn Nauman 1/04/05
Dawn Nauman
Clerk

NOVATION

This agreement is made by the **City of Powell**, a Municipal Corporation hereinafter referred to as "**Powell**" and **G. Frederick Smith Chemical Company**, hereinafter referred to as "**GFS**" regarding a certain agreement for exchange of properties previously executed by the parties on October 12th, 2004.

Whereas the parties both agree that the initial contract had elapsed by its terms and the parties further desire to reaffirm the terms of the original contract changing only the contingency date and otherwise enter into a new agreement with the same terms as the former agreement which is attached hereto and incorporated herein by reference except for the contingency date.

Powell and GFS thereby agree to be bound by a new agreement identical in terms to the old agreement dated October 12th, 2004 which is attached hereto and incorporated herein by reference except for the fact that the contingency date shall be extended to September 1, 2005.

Both parties acknowledge that this is done with the assumption and conditioned upon the Court of Common Pleas approving a continuance in Case No. 03CV-H-07-481 to allow the completing of the contingencies in this contract. Should the Court refuse to do so this contract shall be null and void.

Unless specifically deified herein all terms and provisions of the original agreement between the parties shall remain in full force and effect and are hereby ratified and reaffirmed by each of the parties.

Dated this 4th day of January, 2005.

City of Powell
Pursuant to Ordinance No. 2004-51

By: Stephan A. Lutz, City Manager

G. Frederick Smith Chemical Co.

By: J. Jeffrey Peterson
President