

CITY COUNCIL MEETING MINUTES FROM FEBRUARY 10, 2009

The Regular Meeting was called to order by Mayor Peter J. Strazdas at 7:34 p.m.

The City Clerk called the roll with the following members present: Councilmembers Elizabeth A. Campbell, Margaret E. O'Brien, Claudette S. Reid, Terry R. Urban and Ted W. Vliek, and Mayor Peter J. Strazdas. Mayor Pro Tem Edward J. Sackley was absent with excuse. Also in attendance were City Manager Maurice S. Evans, City Attorney Randall Brown and City Clerk James R. Hudson.

APPROVAL OF MINUTES: Motion by Vliek, seconded by Reid, to approve the January 27, 2009 Special Meeting Minutes as presented. Upon a voice vote, motion carried 6 to 0. Motion by O'Brien, seconded by Reid, to approve the January 27, 2009 Regular Meeting Minutes as presented. Upon a voice vote, motion carried 6 to 0.

* **CONSENT AGENDA:** Mayor Strazdas asked Councilmember Urban to read the Consent Agenda. Councilmember Campbell asked that Item F.2, Compliance Audits, be removed from the Consent Agenda. James Chamness, Terry's Road Service, 5701 East Cork Street, asked that Item G.1, Freedom of Information Act (FOIA) appeal, and Item G.2, Communication from James Chamness dated February 3, 2009, be removed from the Consent Agenda. Motion by Urban, seconded by Reid, to approve the Consent Agenda motions as amended. Upon a roll call vote, motion carried 6 to 0.

* **APPROVAL OF CHECK REGISTER OF FEBRUARY 10, 2009:** Motion by Urban, seconded by Reid, to approve the Check Register of February 10, 2009. Upon a roll call vote, motion carried 6 to 0.

PETITIONS AND STATEMENTS OF CITIZENS: Scott Larson, 1531 Academy Street, Kalamazoo, Chief Medical Officer, Bronson Hospital, Kalamazoo, complimented City Council and City Manager Maurice Evans for the success of the city Health Management Program and challenged City Council to fight secondhand smoke and to encourage tobacco free venues in the City of Portage.

Patricia Crowley, 9242 East CD Avenue, Richland, introduced herself as the new Kalamazoo County Drain Commissioner and expressed an interest in a positive working relationship with City Council.

Scott Randolph, 2212 Ridgfield Road, thanked City Council for keeping taxes low and services high, for enhancing the bus system in Portage and for helping get transportation to the Veterans Administration and Battle Creek. He also expressed his gratitude for city employees who cleaned up driveways and/or tree branches for people in his neighborhood. Discussion followed.

Michelle Serlin, 2830 Tattersall Road, complained that children and families have to walk in the middle of the street on Tattersall and other streets on the way to Amberly School and the community swimming pool that are unplowed and unsalted. She indicated that children have almost been hit many times; that she has had discussions for the past two years with the Amberly School Principal and many families and have determined that there is a need for environmental modification. She cited a need for sidewalks on Tattersall and Ridgfield, better streetlights on the border streets of Tattersall, Amberly, Cypress, Daventry and Rothbury. She also requested signs indicating school crossing intersections at Amberly and Winkfield, Tattersall and Amberly, and Cypress and Ridgfield. She cited a need for traffic management to include a flashing sign 100 yards from school on Tattersall east of Amberly for westbound traffic, speed limit signs on Tattersall and Rothbury and regular plowing of Tattersall and Ridgfield. Discussion followed.

The following residents concurred and spoke in favor of a sidewalk on Tattersall and nearby Amberly and safety signs and lights around Amberly Elementary School: Julia Serlin, 2830 Tattersall, Rachael Sykes, 2828 Tattersall, and Christine Copeland, 2906 Tattersall. Christine Copeland, 2906 Tattersall, asked for an immediate response by providing crossing guards at Tattersall and Amberly.

Kristine Coopes, 2833 Tattersall, spoke in support of striping one side of the road like those of a bike path. Rachel Sykes read a letter sent by Linda and John Mason, 2823 Tattersall. Discussion followed.

City Manager Maurice Evans indicated that getting the neighborhood interested is a positive step in the right direction. He also indicated that the Michigan's Safe Routes to School (SR2S) program is really a school activity and is managed by the Michigan Department of Transportation (MDOT) with the purpose to enable and encourage children, including those with disabilities, to walk and bicycle safely to school. He emphasized that in order to participate, schools must register by completing and returning a registration form signed by the principal; by designating a Safe Routes to School coordinator; by establishing a Safe Routes to School team with the members of the team often including a school administrator, teacher(s), student leader(s), parent(s), a local law enforcement official/officer, and a representative from the local road authority (i.e., city engineer, road commission employee, or a representative from the local MDOT Transportation Service Center); by surveying parents and students and the physical environment around the school and along routes traveled by students in order to identify barriers to safe walking and biking; and by developing an SR2S Action Plan. Discussion followed.

After discussion among City Council, Mr. Evans agreed to provide research, analysis and a report in answer to City Council concerns and for the benefit of the parents by the first City Council Meeting in March once the Traffic Engineer returns from out of the country. Mayor Strazdas offered the parents the information on the SR2S program as provided by the Administration, including the rules and the lead agency. Discussion followed.

Mark Pritchard, 8523 South Westnedge Avenue, announced that there would be a march of the sidewalks, a Parade/Special Event, from Portage Veteran's Memorial Park to Portage Post Office on March 21, 2009.

Newly elected Kalamazoo County Commissioner from District #10 Michael Quinn, 7025 Rockford Street, introduced himself.

REPORTS FROM THE ADMINISTRATION:

* **SCHOOL ELECTION CONSOLIDATION AGREEMENTS:** Motion by Urban, seconded by Reid, to authorize the City Clerk to sign the School Election Consolidation Agreements in accordance with state law. Upon a roll call vote, motion carried 6 to 0.

COMPLIANCE AUDITS: City Manager Maurice Evans explained the request and expressed no reluctance to pursue the individual proposed audits and requested that the process be very methodical from the request for proposals to the finish of the audits. Discussion followed.

Motion by Campbell, seconded by Vliek, to accept the City Manager's report and that City Council proceed with establishing the criteria of a compliance audit on the service contracts and to have the City Manager proceed with the Request for Proposals and bring that information back to City Council for a decision at his earliest convenience. City Attorney Brown asked for a clarification to direct the motion to the McDonald's Towing and Crossroads Expert Auto services contracts and Councilmembers Campbell and Vliek agreed.

James Graham, 2761 Burnock Drive, indicated that he was not disappointed with City Council, only some of the city administrators, and that he had already undergone an audit recently. Mr. Graham recommended that a City Council subcommittee be formed to avoid a conflict of interest and that two (2) separate, different people, attorneys (sic), be assigned to audit each of the contracts. Finally, he asked that the administration be scrutinized at the same level as the contractors are scrutinized. Discussion followed.

Motion by Campbell, seconded by Vliek, to amend the motion to have the Mayor select three Councilmembers as a subcommittee. Upon a roll call vote, motion carried 6 to 0.

Upon a roll call vote, the primary motion carried 6 to 0. Discussion followed.

* **SPECIAL MEETING – COUNTY COMMISSIONERS:** Motion by Urban, seconded by Reid, to set a special meeting with the County Commissioners who represent Portage on Tuesday, March 10, 2009, at 5:30 p.m. at Portage City Hall in Conference Room #1 for the purpose of discussing issues of mutual concern for Portage residents. Upon a roll call vote, motion carried 6 to 0.

* **SPECIAL MEETING – E-MAIL PROCEDURES:** Motion by Urban, seconded by Reid, to set a special meeting on Tuesday, March 24, 2009, at 6:00 p.m. at Portage City Hall in Conference Room #1 for the purpose of discussing issues related to e-mail protocol and retention policies. Upon a roll call vote, motion carried 6 to 0.

COMMUNICATIONS:

COMMUNICATION FROM JAMES CHAMNESS DATED FEBRUARY 3, 2009 – APPEAL AND CLOSED SESSION: Mr. James Chamness expressed frustration regarding obtaining information from the city using the Freedom of Information Act (FOIA), the administration of the McDonald's Towing Contract and his need for the information for which he asked. At the request of Councilmember Vliek, City Attorney Randy Brown explained the process of City Council holding a closed session and that the focus on the meeting with the City Attorney is to discuss a legal opinion. At the request of Councilmember O'Brien, City Attorney Brown and Assistant City Attorney Charlie Bear explained the Freedom of Information Act.

Motion by Urban, seconded by O'Brien, to receive the communication from James Chamness, President of Terry's Road Service, Inc., dated February 3, 2009, issuing an appeal to a Freedom of Information Act (FOIA) denial dated December 23, 2008. Upon a roll call vote, motion carried 6 to 0.

CLOSED SESSION: Motion by Urban, seconded by Vliek, to hold a closed session immediately following the regularly scheduled City Council Meeting of February 10, 2009, to discuss an attorney / client communication. Upon a roll call vote, motion carried 6 to 0.

COMMUNICATION FROM JAMES CHAMNESS DATED FEBRUARY 3, 2009 - COMPLAINT: After the earlier discussion by City Council, Mr. James Chamness withdrew his complaint letter. Discussion followed. Motion by O'Brien, seconded by Campbell, to receive the communication from James Chamness, President of Terry's Road Service, dated February 3, 2009, issuing a complaint regarding the towing contract between the City of Portage and McDonald's Towing. Upon a roll call vote, motion carried 6 to 0.

* **MINUTES OF BOARDS AND COMMISSIONS:** City Council received the minutes of the:
Portage Board of Education Regular of November 24, 2008.
Portage Board of Education Policy Development Minutes of December 15, 2008.
Portage Board of Education Regular of December 15, 2008.
Portage Historic District Commission of January 7, 2009.
Portage Board of Education Policy Development of January 12, 2009.
Portage Board of Education Committee of the Whole Work Session of January 12, 2009.
Kalamazoo County Board of Commissioners Committee of the Whole and Regular of January 20, 2009.

RECESS: 9:08 p.m.

RECONVENE: 10:30 p.m.

APPEAL FROM JAMES CHAMNESS, FEBRUARY 3, 2009: Mayor Strazdas welcomed everyone back and indicated City Council would be addressing the Appeal from James Chamness dated February 3, 2009. Discussion followed.

Motion by Urban, seconded by Reid, to deny the appeal and uphold the original decision to deny the request for the towing log for the month of November 2008 based on the fact that the towing log as it exists with the city was supplied. Upon a roll call vote, motion carried 6 to 0.

After discussion among City Council and clarifications from City Manager Evans and City Attorney Brown, motion by Urban, seconded by Campbell, to grant the appeal and reverse the denial of the information based on the fact that handwritten invoices no longer are available, but the information previously provided to the city that way is now provided electronically, and to direct the city administration to provide the information from the electronic data base that is substantially the same as that available on the hand written invoices, appropriately redacted, if available, for the months of June to November 2008. Discussion followed. Upon a roll call vote, motion carried 6 to 0.

Mayor Strazdas questioned the applicant. Discussion followed. After a clarification from City Attorney Brown, motion by Urban, seconded by Vliek, to deny the appeal and uphold the original decision to deny the police dispatch logs for all calls taken for the month of November 2008, as they were provided as we (sic) understood the request. Discussion followed. At the advice of City Attorney Brown, and in concurrence with Mayor Strazdas, the applicant agreed to submit another FOIA request detailing what he wants. Upon a roll call vote, motion carried 6 to 0.

Motion by Urban, seconded by Reid, to deny the appeal and uphold the original decision to deny "any documents, e-mails, notes, for changes to the 2008-2009 towing contract including but not limited to statements of changes in the denial of FOIA request December 2, 2008 (sic)" as a revision has been made to the contract and, at this time, all such documents are exempt from disclosure as communications and notes of a public body. City Attorney offered the addition to the motion as follows: as advisory nature and cover other than purely factual material and preliminary to a final agency determination of a policy or action or records subject to attorney client privilege. Both makers of the motion agreed to add the language of the City Attorney to the motion. Upon a roll call vote, motion carried 6 to 0.

Mayor Strazdas indicated that the information had been provided in a prior FOIA request. Mr. Chamness explained he was confused about which document was provided that applied to this request. Councilmember O'Brien indicated that it was a letter from the attorney representing McDonald's Towing, but Mr. Chamness was unclear that this was the document in question because it was not cited in the transmittal. Mayor Strazdas asked for a response. Discussion followed. After clarifying the issue for Mr. Chamness, motion by Urban, seconded by Reid, to deny the appeal and uphold the original decision to deny any and all correspondences between City of Portage (all departments including legal department) and McDonald's Towing (including McDonald's attorneys) for the months of October and November 2008 (letters, e-mails, memos, meeting notes) based on the fact that the information was already provided. Upon a roll call vote, motion carried 6 to 0.

Mayor Strazdas asked Mr. Chamness to distinguish his request in Item Number 2 from Item Number 6. Mr. Chamness explained that Item Number 6 is a statement from McDonald's Towing Tracker Software, but Item Number 2 is in reference to handwritten invoices scanned onto the McDonald's Towing computer system, so the two requests are different. Discussion followed. Councilmember Reid indicated that the contract states that the invoice would be obtained by the city on a form, that a new method or form of providing the information has been presented and found to be acceptable, and whether McDonald's Towing scans the items or not, the city can not provide information that is not accessible to the city. Discussion followed. After a few attempts and much discussion, the motion by Urban, seconded by Reid, to deny the appeal and uphold the original denial of the request, not for the reasons in December 23, 2008 letter, but for the reason the information will already be provided under Item Number 2 was withdrawn at the request of Mr. Chamness.

Motion by Reid, seconded by Campbell, to accept the withdrawal of the request for all towing run sheets or statements for the month of November 2008. Councilmember O'Brien suggested that when Mr. Chamness requests information in a specific format, he should consider attaching a form copy of what is wanted. Upon a roll call vote, motion carried 6 to 0. Discussion followed.

Mr. Chamness indicated he was not clear if there was more than the information on the one vehicle for which he received information and City Clerk James Hudson assured him that there was only one. Discussion followed. Motion by Urban, seconded by Vliek, to deny the appeal and uphold the original decision to deny all invoices for City of Portage vehicles using towing in October 2008 based on the fact that the document(s) were provided. Upon a roll call vote, motion carried 6 to 0.

Councilmember O'Brien indicated that the December 23, 2008 letter listed all of the letters provided, but Mr. Chamness could not recall them. Discussion followed. Motion by O'Brien, seconded by Reid, to deny the appeal and uphold the original decision to deny any and all correspondence between the City of Portage and any private investigating service looking into the towing contract or towing services or owners like Graham's Towing, Wedway, Inc., James Graham, Terry's Road Service, Inc., and/or James Chamness for the months of September to November 2008 based on the fact that the information was already provided. Upon a roll call vote, motion carried 6 to 0. Discussion followed.

Mayor Strazdas indicated that he understood Number 9 was a statement and not in the form of an appeal and Mr. Chamness offered to withdraw Number 9. Motion by O'Brien, seconded by Reid, to accept the withdrawal by the applicant, Mr. Chamness, of "any written policies about the City of Portage giving recommendation like the October 6, 2008 letter from McDonald's Towing and Rescue (sic)." Upon a roll call vote, motion carried 6 to 0. Discussion followed.

OTHER CITY MATTERS:

STATEMENTS OF CITY COUNCIL AND CITY MANAGER: Councilmember Vliek acknowledged receipt of a letter from retiring Zoning Board of Appeals Member Clyde Flora and thanked him for his ten years of service to the Board.

Councilmember Reid extolled the efforts of the Portage Public Schools and City Council representatives working together on issues facing the community as a whole and attempts to discover common ground and define the roles of each of the public entities.

Councilmember Urban asked the public to recognize that the City Council works very diligently to discuss issues, deliberate, and make decisions within City Council limitations under the Open Meeting Act. Mayor Strazdas concurred.

City Manager Evans and Mayor Strazdas emphasized the need for citizen participation at the City Council Work Session, Saturday, February 14, 2009, at 9:00 a.m. in City Council Chambers and Mr. Evans recognized Benefits Services Director Patti Thompson and her staff for implementing the Health Management Program that was praised earlier by Scott Larson, Chief Medical Officer, Bronson Hospital.

ADJOURNMENT: Mayor Strazdas adjourned the meeting at 11:28 p.m.

James R. Hudson, City Clerk

*Indicates items included on the Consent Agenda.