

## CITY COUNCIL MEETING MINUTES FROM MARCH 24, 2009

The Regular Meeting was called to order by Mayor Peter J. Strazdas at 7:30 p.m.

Mayor Strazdas introduced Ravi Akkoo of the Hindu Community, who gave the invocation and Cub Scout Troop Pack 287 and Boy Scout Troop 244 led City Council and the audience in reciting the Pledge of Allegiance.

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 Pro Tem Edward J. Sackley and Mayor Peter J. Strazdas. Also in attendance were City Manager Maurice S. Evans, City Attorney Randy Brown and City Clerk James R. Hudson.

**PROCLAMATION:** Mayor Strazdas issued the Fair Housing Resolution of 2009. Fair Housing Center of Southwest Michigan Executive Director Bob Ells addressed Fair Housing in the community and invited City Council and the audience to the Fair Housing Center of Southwest Michigan Annual Conference, Friday, April 3, 2009, Cityscape Event Centre, 125 South Kalamazoo Mall, and invited them also to a special session on Housing Law, Thursday evening, April 23, 2009, at the YWCA. Mr. Ells also mentioned that the Kalamazoo Summit on Racism will be held, Wednesday, May 20, 2009, at the Portage Community Center.

**APPROVAL OF MINUTES:** Motion by Reid, seconded by Vliek, to approve March 10, 2009 Special Meeting Minutes as presented. Upon a voice vote, motion carried 7 to 0. Motion by Vliek, seconded by Sackley, to approve March 11, 2009 Special Meeting Minutes as presented. Upon a voice vote, motion carried 7 to 0. Motion by O'Brien, seconded by Reid, to approve March 10, 2009 Regular Meeting Minutes as presented. Upon a voice vote, motion carried 7 to 0.

\* **CONSENT AGENDA:** Mayor Strazdas asked Councilmember O'Brien to read the Consent Agenda. Mayor Pro Tem Sackley asked that Item F.10, Austin Lake Governmental Board Appointment, be removed from the Consent Agenda, and Lynn Elliott, 9724 East Shore Drive, expressed her support. James Chamness, Terry's Road Service, 5701 East Cork Street, Kalamazoo, asked that Item F.13, March 3, 2009 Communications from James Chamness, Terry's Road Service, be removed from the Consent Agenda. Motion by O'Brien, seconded by Reid, to approve the Consent Agenda motions as amended. Upon a roll call vote, motion carried 7 to 0.

\* **APPROVAL OF CHECK REGISTER OF MARCH 24, 2009:** Motion by O'Brien, seconded by Reid, to approve the Check Register of March 24, 2009. Upon a roll call vote, motion carried 7 to 0.

### REPORTS FROM THE ADMINISTRATION:

\* **ADOPTION OF BOND RESOLUTIONS:** Motion by O'Brien, seconded by Reid, to adopt the Bond Resolution authorizing the sale of City of Portage Capital Improvement Bonds, Series 2009, in the amount of \$3,440,000; and the Resolution Approving the Undertaking to Provide Continuing Disclosure by the City of Portage for the Capital Improvement Bonds, Series 2009. Upon a roll call vote, motion carried 7 to 0. Resolutions recorded on pages 267 and 279 of City of Portage Resolution Book No. 43.

\* **NONPROFIT ORGANIZATION RECOGNITION:** Motion by O'Brien, seconded by Reid, to adopt the Resolution for Charitable Gaming License recognizing Cole Community Solutions, Inc., as a nonprofit organization in the City of Portage. Upon a roll call vote, motion carried 7 to 0.

\* **TRANSFER OWNERSHIP OF A 2008 RESORT CLASS C LICENSED BUSINESS (MCL 436.1531(4) A NEW DANCE-ENTERTAINMENT PERMIT FOR QUICK CASUAL CORPORATION (BENNIGAN'S RESTAURANT):** Motion by O'Brien, seconded by Reid, to grant the request to transfer ownership of a 2008 Resort Class C Licensed Business (MCL 436.1531(4); minimum seating: 247; non transferable) located at 5314 South Westnedge Avenue, Portage, Michigan 49002, Kalamazoo County, from The Sweet Onion, Inc., to Quick Casual Corporation and grant a new Dance-Entertainment Permit. Upon a roll call vote, motion carried 7 to 0.

\* **ORDINANCE AMENDMENT CHAPTER 2, ADMINISTRATION, ARTICLE 7, BOARDS, COMMISSIONS AND AUTHORITIES, SECTION 2-272, PURPOSE:** Motion by O'Brien, seconded by Reid, to accept for first reading the proposed amendment to the City of Portage Code of Ordinances, Section 2-272 of Chapter 2, Administration, Article 7, Boards, Commissions and Authorities, and consider final adoption on April 14, 2009. Upon a roll call vote, motion carried 7 to 0.

\* **PROPOSED AMENDMENT TO THE CODE OF ORDINANCES:** Motion by O'Brien, seconded by Reid, to accept for first reading the proposed amendment to the City of Portage Code of Ordinances to Chapter 34, Fire Prevention and Protection, Section 34-154, and consider final adoption on April 14, 2009. Upon a roll call vote, motion carried 7 to 0.

\* **GARDEN LANE WATER TREATMENT PLANT:** Motion by O'Brien, seconded by Reid, to approve a change order in the amount of \$25,000 to Adams Building Contractors, Incorporated, for the necessary placement of an additional 2 feet of clean fill on the Garden Lane Water Treatment Plant site and authorize the City Manager to sign the change order on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

\* **LEASE AGREEMENT - STATE SYSTEMS RADIO:** Motion by O'Brien, seconded by Reid, to renew a contract to lease space on radio towers from State Systems Radio, Inc., for a period of five years at an initial monthly cost of \$1,102.00, with a 3 percent annual increase, or a total amount not to exceed \$70,200, and authorize the City Manager to execute all documents related to the contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

\* **BUDGET AMENDMENT:** Motion by O'Brien, seconded by Reid, to approve amending the Fiscal Year 2008-09 General Fund Budget to transfer an additional \$400,000 to the Major Streets Fund and \$100,000 to the Local Streets Fund. Upon a roll call vote, motion carried 7 to 0.

\* **AMBERLY ELEMENTARY SCHOOL NEIGHBORHOOD STREET LIGHTING:** Motion by O'Brien, seconded by Reid, to support the request for upgrading street lighting in the Amberly Elementary School neighborhood to current city standards. Upon a roll call vote, motion carried 7 to 0.

**AUSTIN LAKE GOVERNMENTAL BOARD APPOINTMENT:** Jim Pearson, 3004 East Shore Drive, thanked Councilmembers Campbell and Urban for spending time at an information session at the Portage District Library, and asked the City Council to take a poll before proceeding with any Special Assessment District or other such action with regards to the Austin Lake Governmental Board. He then indicated that John Crago, 9728 East Shore Drive, Acting President of the Austin Lake Riparian Board, is interested in presenting pertinent documents for City Council consideration at this time.

John Crago questioned the existence of the Austin Lake Governmental Board and summarized some of the history of the Austin Lake Governmental Board. Mr. Crago indicated that he possesses

documents that indicate that the Austin Lake Governmental Board voted 4 to 0 to dissolve itself, but he admitted that he had no evidence that the City Council has ever adopted a Resolution to dissolve the Austin Lake Governmental Board. Discussion followed. City Manager Evans asked for a copy of the records that showed the Austin Lake Governmental Board voted to dissolve itself.

Councilmember Urban asked City Attorney Randy Brown if action by City Council is necessary for the Austin Lake Governmental Board to be dissolved. Mr. Brown indicated in the affirmative and referred to the 1996 City Council Resolution that properly established the Austin Lake Governmental Board, and indicated that, in order to dissolve the Austin Lake Governmental Board, there needs to be a Resolution making certain findings and City Council has to hold a public hearing. Discussion followed.

Mayor Strazdas asked that the Administration and the City Attorney meet with the Acting President of the Austin Lake Riparian Board, Mr. Crago. Discussion followed. Motion by O'Brien, seconded by Reid, to refer the appointment of another City Councilmember to the Austin Lake Governmental Board to the Administration and City Attorney for further review. Upon a roll call vote, motion carried 7 to 0.

Lynn Elliott, 9724 East Shore Drive, asked that the Administration be fully apprised of all of the details and results of the meeting.

\* **FISCAL YEAR 2009-10 PROPOSED BUDGET REVIEW SCHEDULE:** Motion by O'Brien, seconded by Reid, to establish April 21 and May 5 from 6-9 p.m. as the dates for review of the proposed Fiscal Year 2009-10 Budget. Upon a roll call vote, motion carried 7 to 0.

\* **TREE CITY USA TREE PLANTING AND PROCLAMATION – INFORMATION ONLY:** Motion by O'Brien, seconded by Reid, to receive the communication from the City Manager regarding the Tree City USA Tree Planting and Proclamation as information only. Upon a roll call vote, motion carried 7 to 0.

**MARCH 3, 2009 COMMUNICATIONS FROM MR. J. CHAMNESS, TERRY'S ROAD SERVICE - INFORMATION ONLY:** Mr. James Chamness expressed his appreciation for the letter he received from Mayor Strazdas with regard to his recent appeal in which City Council granted what had previously been denied with regard to a Freedom of Information Act (FOIA) request, but was perplexed that he still did not have the information. Discussion followed. City Attorney Randy Brown indicated that the city responds to all FOIA requests immediately and the requester gets whatever is in our possession in answer to the request; that there is never anything in our possession that is not given to the requester with appropriate redaction; that the information that was requested was not in the possession of the city at the time of the request; however, the city followed up with McDonald's Towing to get the information which they ultimately did provide.

City Attorney Charlie Bear explained that documents, monthly logs and invoices were recently received for October 2008 through January 2009 from McDonald's Towing, have been reviewed and information on these documents of a private nature are currently being redacted by the Portage Police Department Records staff and should be ready by the end of the week. Discussion followed.

Mr. Chamness also asked City Council to address his concerns in his communication in the form of a complaint that the city has failed to enact a policy to provide for a rotation of calls for heavy duty towing services among vendors so he may obtain some of the heavy towing for his business.

Discussion followed. Motion by Vliek, seconded by Sackley, to receive the communication from the City Manager in response to the March 3, 2009 communications from James Chamness, Terry's Road Service, as information only. Upon a roll call vote, motion carried 7 to 0.

\* **FEBRUARY 2009 SUMMARY ENVIRONMENTAL ACTIVITY REPORT – INFORMATION ONLY:** Motion by O’Brien, seconded by Reid, to receive the communication from the City Manager regarding the February 2009 Summary Environmental Activity Report as information only. Upon a roll call vote, motion carried 7 to 0.

\* **MONTHLY REPORTS:** Motion by O’Brien, seconded by Reid, to receive the Department Monthly Reports. Upon a roll call vote, motion carried 7 to 0.

### **COMMUNICATIONS:**

**ENVIRONMENTAL BOARD CHAIR DENISE CLEGG REGARDING ENVIRONMENTAL BOARD HEARING PROCESS:** Environmental Board Chair Denise Clegg reviewed her communication, the communication from City Attorney Randy Brown and indicated that the hearing process was developed based upon the process used by the Portage Planning Commission and reviewed by the City Attorney. Discussion followed.

Motion by O’Brien, seconded by Reid, to receive the communication from Denise Clegg, Environmental Board Chair, regarding a proposed rule of operation for the public hearing of naturalized lawn and land management permit applications of the Environmental Board and approve the proposed rules of operation for the public hearing of naturalized lawn and land management permit applications of the Environmental Board. Upon a roll call vote, motion carried 7 to 0. Discussion followed.

**CITY OF PORTAGE FISCAL YEAR 2009-19 CAPITAL IMPROVEMENT PROGRAM:** When asked by Mayor Pro Tem Sackley and Mayor Strazdas, City Manager Maurice Evans reviewed the City of Portage Fiscal Year 2009-19 Capital Improvement Program (CIP) and indicated that the focus is on bridges and roads expenditures, provided the State of Michigan grants approval:

- \$68.5 million for the I-94 bridge over South Westnedge Avenue.
- Kilgore Road from Lovers Lane to South Westnedge Avenue.
- Centre Avenue repaving from South Westnedge Avenue to Portage Road.

When asked by Mr. Evans, City Engineer Chris Barnes confirmed that there would be no local match requirement, but indicated that the South Westnedge water main extension cost would be approximately \$500 thousand which is a lot less than anticipated and Kilgore Road expenditures would be in the range of \$50,000 instead of \$750,000. Discussion followed.

Motion by Urban, seconded by Sackley, to receive the communication from the Planning Commission regarding the City of Portage Fiscal Year 2009-19 Capital Improvement Program. Upon a roll call vote, motion carried 7 to 0.

\* **MINUTES OF BOARDS AND COMMISSIONS:** City Council received the minutes of the:

Portage Construction Boards of Appeals of October 6, 2008.

Portage Park Board of February 4, 2009.

Portage Zoning Board of Appeals of February 9, 2009.

Portage Environmental Board of February 11, 2009.

Portage Senior Citizen Advisory Board of February 18, 2009.

Kalamazoo County Board of Commissioners Committee of the Whole and Regular of March 3, 2009.

Portage Planning Commission of March 5, 2009.

## **AD HOC COMMITTEE REPORTS:**

**YOUTH INVOLVEMENT PROGRAMS:** Mayor Strazdas chose to take this item out of order after the Consent Agenda to allow the youth involved time to present information to City Council and return home early. Mayor Strazdas invited Assistant City Manager Sean McBride to provide information on youth involvement on the twelve-member Youth Advisory Committee and the Youth Participants on the Environmental Board, the Historical District Commission, the Human Services Board, the Park Board and the Senior Citizens Advisory Board. Mr. McBride invited those who were able to be at the meeting to speak to City Council regarding their goals and experiences.

Abhiram Krishnan, Youth Advisory Committee Member, Sujay Dewan, Youth Advisory Committee Member and Logan Wessendorf, Human Services Board Youth Participant, provided updates regarding their participation. Discussion followed.

Councilmember O'Brien explained that, with the leadership of Sean McBride, the youth set their own goals and Councilmember Campbell thanked the youth participants for their time and efforts. Mayor Strazdas concurred. Councilmember O'Brien invited youth of Portage to come forward to participate next year.

Motion by O'Brien, seconded by Campbell, to adopt a Resolution amending the Program Guidelines for the Youth Advisory Committee and Appointments of Youth Participants to City Boards and Commissions. Upon a roll call vote, motion carried 7 to 0. Resolution recorded on page 281 of City of Portage Resolution Book No. 43.

**CITY COUNCIL AUDIT COMMITTEE:** Councilmember Reid commented that Mayor Strazdas, in response to a motion passed by City Council, appointed Councilmember Campbell, Mayor Pro Tem Sackley and her to a the Contract Audit Committee, a subcommittee (the committee) of City Council, to establish the criteria for a compliance audit on the service contracts in order to determine whether or not an audit would be done. Councilmember Reid indicated that the committee met on March 13, 2009, and discussed information provided previously through City Council Meetings.

Councilmember Reid indicated that the findings of the subcommittee were:

- The committee is unaware of any complaints by citizens who have been serviced through the towing contract by McDonald's Towing.
- The committee recognizes no material issues of contract compliance by the current towing contract vendor.
- The committee feels that the City and her citizens do not stand to benefit from the expenditure of funds necessary to implement an independent audit of contract compliance.
- The committee recommends not moving forward with an independent audit of the towing or vehicle service contract.
- The citizens who have brought this issue forward have the option of pursuing their concerns through the legal system.
- The committee recognizes and appreciates the service provided by McDonald's Towing per the towing contract. Discussion followed.

Councilmember Vlieg objected to these findings indicating that the City Council acted unanimously to do an audit and he understood that they were asked to come back with a profile for the audit and an estimated cost. Mr. Vlieg expressed an interest in knowing once and for all that there is no violation and if there are violations that we need to identify them and deal with them. Discussion followed.

Councilmember O'Brien thanked the committee for the report and asked whether the committee looked at the complaint and compared it to the administrative reports with regards to Finding

#2, where the committee recognized no material issues of contract compliance by the current towing contract vendor.

In general, Mayor Pro Tem Sackley explained that with the exception of the McDonald's Towing competitors, no customer has come forward to complain about the contract; that City Council does not approve this level of contract because it is not warranted owing to the low amount of dollar value involved; that it is a stop-loss contract that sets rates provided in a connection with a law enforcement haul; that the committee found no public purpose to be served with auditing two of the 230 contracts of the city; and, the committee could find no rationale for the city policy-making body to employ someone from the outside to audit the contract since there have been no complaints from any citizens. He further discussed some of the details of the rationale of the committee.

Mayor Pro Tem Sackley confirmed the contention of Councilmember O'Brien, who indicated that the committee found it difficult to determine the scope of the audit since no customers had complained about the towing contract. Discussion followed.

Mayor Pro Tem Sackley indicated that his review of the City Council Meeting minutes of February 10 and 24, 2009, reflected that it was the intention of City Council to proceed with an audit. However, he recalled specifically being on the record on February 24 stating, "...if a decision is made to proceed with an audit," so there was no presumption that the City Council would proceed with an audit regardless of the committee recommendation or the cost. He also indicated that 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 and he asked that the administration be scrutinized at the same level as the contractors are scrutinized. Finally, Mayor Pro Tem Sackley indicated that in order to satisfy the requests of Mr. Graham and Mr. Chamness, the scope of the request for proposal would be an expanding circle of unknown boundaries. He indicated that the scope of the request for a proposal for an audit would not be for a financial audit, but for a forensic audit and would not be acceptable to all parties.

Councilmember Vlieg indicated he did not disagree with much of what Mayor Pro Tem Sackley was saying, but expressed his disappointment of not receiving a cost estimate for an audit as there is a dollar amount beyond which he would not find acceptable, but that it is important to conduct the audit.

Councilmember Reid pointed out that if the committee looked at the material issues brought by citizens, there would be no cost, but if the committee looked at the issues brought by the McDonald's competitors, there would be an undetermined and inestimable amount for the cost of an audit, because there was no way to put parameters on the scope of the audit. Discussion followed.

Councilmember Urban referred to the proposal from the Administration to authorize the City Manager to engage the services of an independent auditor to conduct administrative and contractor compliance audits for the McDonald's Towing and Crossroads Expert Auto Services contracts at an expenditure not to exceed \$12,000. He also recalled that the City Council decided there was a need for a committee to examine the scope of the effort, to determine the cost of an audit and come back to City Council for a final determination. He did not recall giving the committee *carte blanche* authorization and expressed a willingness to accept the committee recommendation. Discussion followed.

City Manager Maurice Evans indicated that the City of Portage has excellent contract administration; that the administration is approaching spending \$100,000 on this one issue; and, that the cost of the audit may not be \$100,000, but would be significant.

Mayor Pro Tem Sackley indicated that the committee discussed the fact that the Administration should not be involved in the request for proposal as the Administration would be the subject of the audit. Also, in fairness, answering requests for proposals themselves cost, so he would be reluctant to have someone come in and do the request for proposal, especially if there is no expectation to proceed with the audit. Discussion followed.

Mayor Strazdas expressed his frustration because he thought the intent of the City Council was to issue a charge to the committee to determine what was to be contained in the request for a proposal.

Mayor Strazdas confided that he was in favor of engaging a third party to review the facts, but did not appreciate the breadth of the review that would be necessary. He thanked the committee for their work, expressed his appreciation for the amount of money that could be spent on an audit, but concurred with Councilmember Vliek that he is frustrated for not getting a third party review, yet recognized that there are no complaints on this issue from the citizens. He then invited James Graham, 2761 Burnock Drive, to speak on the matter.

Mr. Graham expressed his appreciation to City Council for all of the work they have done. He expressed his frustration over not resolving this issue, provided some scenarios and examples to reveal he perceives problems with the towing practices of McDonald's Towing and expressed his interest in having the towing contract administered properly.

James Chamness, Terry's Road Service, 5701 East Cork Street, Kalamazoo, indicated that performing an audit is in the best interest of the citizens and in the best interest of the city. He stressed that there are perceived problems with the towing contract and encouraged City Council to address them. Discussion followed.

City Attorney Randy Brown advised City Council that, whether the motion is to proceed with an audit or not to proceed with an audit, the reasons need to be stated. Discussion followed.

Motion by Reid, seconded by Sackley, to receive the communication from the City Council Audit Committee regarding the compliance audit for the McDonald's Towing and Crossroads Expert Auto Service contracts and to not proceed with the audit based on the findings that the committee is unaware of any complaints by citizens who have been serviced through the towing contract by McDonald's Towing; the committee recognizes no material issues of contract compliance by the current towing contract vendor; the committee feels that the City and her citizens do not stand to benefit from the expenditure of funds necessary to implement an independent audit of contract compliance. Discussion followed. Upon a roll call vote, motion carried 5 to 2. Yeas: Councilmembers Campbell, O'Brien, Reid, and Urban and Mayor Pro Tem Sackley. No: Councilmember Vliek and Mayor Strazdas.

### **BID TABULATIONS:**

\* **HAVERHILL WATER TOWER INTERIOR RENOVATIONS:** Motion by O'Brien, seconded by Reid, to award a contract to L.C. United Painting Company, Incorporated, in the not-to-exceed amount of \$116,000 for the Haverhill Water Tower Interior Renovations; accept the proposal from Dixon Engineering for testing and inspection in the amount of \$11,249; and authorize the City Manager to execute all documents related to the contracts on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

\* **EMERGENCY SANITARY SEWER LEAD REPAIR:** Motion by O'Brien, seconded by Reid, to award a contract for the Emergency Sanitary Sewer Lead Repair to Peters Construction Company in the not-to-exceed amount of \$26,212.87 and authorize the City Manager to execute all documents related to the contract on behalf of the city. Upon a roll call vote, motion carried 7 to 0.

### **OTHER CITY MATTERS:**

**STATEMENTS OF CITY COUNCIL AND CITY MANAGER:** Councilmember Vliek praised the newly formed city youth involvement programs and referred to the nearly \$200 million impact on the local economy from the \$120 million Portage Public School bond issue, the \$68.5 million grant for the I-94 bridge over South Westnedge Avenue and an \$11 million City of Portage Capital Improvement Program (CIP). Mayor Strazdas concurred.

City Manager Maurice Evans cited a Letter of Accreditation received by Chief Richard White on behalf of the Portage Police Department providing CALEA Designation from the Commission on Accreditation for Law Enforcement Agencies for the third time for utilizing highly regarded policy and practices throughout the Department.

Mayor Pro Tem Sackley thanked City Manager Maurice Evans, Police Chief Richard White, Deputy Police Chief Kit Lirot and Financial Services Director Bob Luders for their candor with the Contract Audit Ad Hoc Committee and thanked Mr. James Chamness and Mr. James Graham for bringing the matter of the Towing Contract forward to the City Council for review.

**ADJOURNMENT:** Mayor Strazdas adjourned the meeting at 9:30 p.m.

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James R. Hudson, City Clerk

**\*Indicates items included on the Consent Agenda.**