

## City Council

### Regular Meeting Minutes

Monday, July 15, 2013  
7:00 p.m., Council Chambers



#### 1. Call to Order by Mayor Burr at 7:00 p.m.

#### 2. Invocation

- Minister Douglas Pompey – Emmanuel Community Church

#### 3. Roll Call

Present: Arnold, Gruber, Klavins, Kozlik Wall, Patterson, Burr

Absent: Fitzgibbon

Moved by Patterson to excuse Councilmember Fitzgibbon due to personal business.  
Seconded by Arnold.

Voted Yes: All. Motion Carried.

#### 4. Approval of Agenda

Moved by Patterson to approve the agenda. Seconded by Gruber

Voted Yes: All. Motion Carried.

#### 5. Consent Agenda: Items A thru C (Roll Call Vote Required)

Moved by Arnold seconded by Patterson to approve the Consent Agenda as follows:

- A. Council will be requested to approve the City Council Minutes of July 1, 2013.
- B. Bills totaling \$524,643.91 for the period ending July 15, 2013 be approved and forwarded to the Clerk and Treasurer for payment.
- C. Council will be asked to consider a motion to approve professional services agreements for the following projects:
  - 1) Street Resurfacing on Center Street, Conger Street, and Wilson Street: \$86,500.00
  - 2) Monroe Bluff Restoration: \$14,300.00
  - 3) BMX Pump Track: \$6,500.00

A Roll Call Vote was taken:

Yeas: Arnold, Gruber, Klavins, Kozlik Wall, Patterson, Burr

Nays: None

## UNFINISHED BUSINESS

6. **City Council will be asked to consider the following regarding the Kalamazoo Street Phase 2 Special Assessment:**
  - A. **Hold a public hearing regarding the Kalamazoo Street Phase 2 Special Assessment District.**
  - B. **Approve Resolution 2013-39 for confirmation of the Kalamazoo Street Phase 2 Special Assessment roll; lien; payment and collection of the special assessment.**
  - C. **Approve construction contract for the Kalamazoo Street Phase 2 Special Assessment.**
  - D. **Approve materials testing contract for the Kalamazoo Street Phase 2 Project.**
  - E. **Instruct City Manager to prepare an update to the city's property tax exemption policy for the City Council's consideration, to provide relief for poverty stricken property owners with special assessment debt.**

*Background Information:* The City Council will be asked to consider a variety of actions on whether to allow the Kalamazoo Street Reconstruction Phase 2 project to proceed.

At the July 1<sup>st</sup> regular meeting, the City Council tabled action related to the Kalamazoo Street Reconstruction Phase 2 project. The decision to table action was reached after the City Council heard complaints from the impacted property owners about the use of the special assessment district (SAD) and the potential for personal hardship due to the SAD. At that time, the city's staff agreed to review the potential for poverty exemptions from the SAD and to review whether the city's SAD terms were competitive.

The city's attorney has reviewed the General Property Tax Act and noted that the city has adopted a policy to provide a property tax exemption to qualified homeowners who, by reason of poverty, are unable to contribute to the public charges. The city's attorney has noted that a similar accommodation can be provided to property owners who are unable to pay special assessment installments relating to public water and sewer improvements. As a result, should the City Council wish to offer this exemption, staff will prepare the files for the City Council's consideration. Attached is an attorney opinion which confirms that exemption program could be offered to property owners who have been part of a recent SAD.

The City Council approved a similar program, specifically for property tax relief, at the November 19, 2012 regular meeting. In an effort to create a more acceptable local level for the poverty guidelines, staff modified the asset standards to reflect the asset eligibility limitation to not exceed \$5,000 (as opposed to the original \$2,000). Further, the guidelines were modified to reflect that an individual's primary motor vehicle would not be included in the asset calculation. The final adjustment that staff made to the proposed guidelines was to increase the poverty threshold maximum income level by \$5,000 per unit of family. Ultimately the adjustments made by staff were accepted by the City Council and the guidelines were approved and adopted. These modified guidelines have been used since 2009.

As part of that program approval, the City Council adopted poverty standards which exceed the State's minimum standard, and are intended to provide a benefit to a greater number of applicants. Should the City Council wish to offer a similar benefit to individuals with SAD

debt, staff would work with the city's attorney to establish a similar program and similar poverty exemption guidelines.

With regards to the city's percentage applied to SAD amounts, the city has traditionally charged 4.5%. Staff has inquired with other communities about the percentage being charged for special assessments. Below is a breakdown of those amounts:

- City of St. Joseph: 6.00% interest, 10 year terms
- City of Grand Haven: 6:00% interest
- City of Holland: 1.5% under the prime rate or 2.00% minimum
- City of Dowagiac: 4.25%, 10 year terms

Based on the informal polling of surrounding communities, it appears the accepted interest rate is placed at a reasonable level.

Finally, the city's staff recommends the City Council proceeds with the Kalamazoo Street Reconstruction Phase 2 project, SAD approval, and contract awards. In the attached staff report, it is noted that if the contract is not awarded on July 15<sup>th</sup> staff will likely need to rebid the street reconstruction project. The rebidding is likely to result in higher project costs and potentially higher assessment amounts. This is due to the current recommended contractor, DeSal Excavating, having a substantially lower construction bid than the city's other bidders. Staff anticipates that if rebidding is required, the project will not be constructed until the spring of 2014 and the costs are likely to rise.

**Item A: Hold public hearing regarding the Kalamazoo Street Phase 2 Special Assessment.**

Moved by Kozlik Wall to open the public hearing regarding the Kalamazoo Street Phase 2 Special Assessment. Seconded by Klavins.

A Roll Call Vote was taken:

Yeas: Arnold, Gruber, Klavins, Kozlik Wall, Patterson, Burr

Nays: None

Motion carried.

Public Comment:

Denise Lewis from Emmanuel Community Church – Questioned how the church differs from others in regards to paying special assessment. Also voiced concerns about water build up in church parking lot by Elkenburg and Kalamazoo Streets.

Elaine Herbert – Voiced concerns about the inequality of special assessments.

Moved by Kozlik Wall to close the public hearing regarding the Kalamazoo Street Phase 2 Special Assessment. Seconded by Patterson.

Voted Yes: All. Motion carried.

**Item B: Approve Resolution 2013-39 for confirmation of the Kalamazoo Street Phase 2 Special Assessment roll; lien; payment and collection of the special assessment.**

Moved by Patterson to approve Resolution 2013-39 for conformation of the Kalamazoo Street Phase 2 Special Assessment roll; lien; payment and collection of the special assessment. Seconded by Arnold.

Voted Yes: All. Motion carried.

**Item C: Approve construction contract for the Kalamazoo Street Phase 2 Special Assessment.**

Moved by Arnold to approve construction contract with DeSal Excavating for the Kalamazoo Street Phase 2 Special Assessment. Seconded by Gruber.

Voted Yes: All. Motion carried.

**Item D: Approve materials testing contract for the Kalamazoo Street Phase 2 Project.**

Moved by Patterson to approve materials testing contract with SME for the Kalamazoo Street Phase 2 Special Assessment. Seconded by Arnold.

Voted Yes: All. Motion carried.

**Item E: Instruct City Manager to prepare an update to the city's property tax exemption policy for the City Council's consideration, to provide relief for poverty stricken property owners with special assessment debt.**

Moved by Patterson to approve City Manager to prepare an update to the city's property tax exemption policy for the City Council's consideration, to provide relief for poverty stricken property owners with special assessment debt. Seconded by Klavins.

Voted Yes: All. Motion carried.

NEW BUSINESS

**7. City Council will be asked to consider approval of Resolution 2013-42 to approve and submit the language of the proposed amendment to Chapter 4, Section 4.15 of the Charter of the City of South Haven, Michigan.**

*Background Information:* The City Council will be asked to consider a resolution to place ballot language on the November 5, 2013 ballot, which asks the city's voters whether they wish to amend the city's Charter to remove term limits for the city's appointed boards and commissions. Please note; this ballot proposal does not seek to change the use of term limits for the City Council.

As part of this year's priority setting process, the City Council expressed interest in exploring the possibility of removing the term limit provision for board and commission members. That priority is listed below:

**Priority #9; City Code & Charter Review**

City Council will seek to review and consider possible alterations to the City's Code of Ordinances. The following tasks will be completed:

- During the 2013-14 fiscal year Council will work with staff to review and consider alterations to the City's Code of Ordinances to ensure best practices. Staff will be expected to prepare a variety of code review reports, with possible alterations, for the City Council's consideration.
- Included in the review process, the Council will work with staff to review term limits on appointed boards and commissions, and consider whether term limits are still beneficial to the City of South Haven.

As part of the effort to advance this issue, the city's staff has worked with the city attorney to review whether term limits, for appointed boards and commissions, are common for communities within the State of Michigan and to prepare possible ballot language for the Council's consideration. The city's attorney has noted that the use of term limits for appointed boards and commissions varies amongst communities throughout the state. The attorney further noted that the process for placing the language onto an upcoming ballot requires action from the City Council and officials from the State of Michigan. Should the Council wish to proceed with this process; the Council will need to adopt a resolution which allows staff to forward the proposal to the Governor's office and Attorney General's office for review and comment. Once the review process is completed, then the City Council could consider placing the item onto the November 5, 2013 ballot, for the city resident's consideration.

The ballot language described in the attached resolution reads as follows:

- Shall Chapter 4, Section 4.15 of the City Charter be amended to provide that members of all Boards and Commissions may serve on the same body without term limits?

Moved by Kozlik Wall to approve Resolution 2013-42 to approve and submit the language of the proposed amendment to Chapter 4, Section 4.15 of the Charter of the City of South Haven, Michigan. Seconded by Gruber.

Public Comment:

Mary Lynn Bugge – voiced concerns about the board and commission appointment process.

Denise Lewis – Asked that Council please speak up because she is struggling to hear the meeting.

Voted Yes: All. Motion carried.

**8. City Council will be asked to consider approval of Resolution 2013-43 intent to establish a Corridor Improvement Authority to address issues related to the I-196 Business Loop and M-43 in the city limits.**

*Background Information:* The City Council will be asked to consider a resolution of intent to proceed with the establishment of a Corridor Improvement Authority to address issues related to the I-196 Business Loop and M-43 in the city limits.

As part of this year's priority setting process, the City Council expressed interest in planning improvements to the I-196 Business Loop and exploring financing for those improvements. That priority is listed below:

**Priority #5; Infrastructure Maintenance & Improvements**

City Council will seek to maintain the highest quality public infrastructure. The following tasks will be completed:

- During the 2013-14 fiscal year Council will work with staff and the Board of Public Utilities to explore the city's sanitary sewer system and eliminate inflow and infiltration of storm water connections from flowing to the Waste Water Treatment Plant.
- During the 2013-14 fiscal year Council will work with staff to plan and explore the possible creation of a Corridor Improvement District, which seeks to improve the public infrastructure on portion of Broadway and Phoenix Streets.

For tonight's meeting, staff has prepared the necessary materials for the City Council to consider whether or not to proceed with the establishment of the proposed Corridor Improvement Authority.

Moved by Patterson to approve Resolution 2013-43 intent to establish a Corridor Improvement Authority to address issues related to the I-196 Business Loop and M-43 in the city limits. Seconded by Kozlik Wall.

Voted Yes: All. Motion carried.

**9. City Council will be asked to consider approval of a temporary sign to promote the South Haven app.**

Public Comment:

Elaine Herbert – Propose that Council allow Chamber of Commerce to only hang one banner for their app. Voiced concern that this is blight.

Mary Lynn Bugge – Asked if signs have been reviewed by the zoning board. Agrees with Elaine that this is blight.

NO ACTION TAKEN

**10. City Council will be asked to consider Special Event 2013-26 Elkenberg Basketball Festival.**

*Background Information:* This special event, Elkenburg Basketball Festival, is ready for City Council to approve.

W.O.R.D. Impact is requesting to use Elkenburg Park on July 19<sup>th</sup> from 8:00pm – 12:00 am each day for a basketball game. They are also requesting to bring in additional lights.

The organization originally requested to do this event, called Summer Jam Midnight, on July 20<sup>th</sup> from 10:00 pm – 1:00 am but it was denied by City Council due to another event occurring on the 20<sup>th</sup> and the lateness of the event. During that City Council meeting it was suggested to the event organizer that they move the event to another night and end the event by the park's closing time of 10:00 pm. There were also many residents who live near

the park, of the park that came forward stating that they also do not want to see the event occur past the closing time of the park.

Staff has reviewed this special event application and the following is a list of issues they have with this event.

- Event goes two hours past closing time of park.
- Neighbors of the park will be affected by the additional lights brought in and the noise (there were complaints about the lights from last year's event).

Due to the facts presented above, staff would recommend that City Council not approve this special event as submitted but should consider approving this event with one of the following considerations:

- 1) Event would begin earlier in the day and end by 10:00 pm (closing time of the park).
- 2) Event would begin earlier in the day and end by 11:00 pm (the same time other city events, such as Harborfest, Fireworks and the Blueberry Festival, end).

Public Comment:

Denise Lewis from Emmanuel Community Church – In favor of this event going to 11 p.m.

Dorothy Sherrod – Asks that this event is only approved until 10 p.m. Concerned with trash left by basketball players from the previous weekend. Concerned that park is not completed.

Moved by Patterson to approve Special Event 2013-26 Elkenberg Basketball Festival to run from 7 p.m. to 11 p.m. Seconded by Klavins.

Voted Yes: Gruber, Klavins, Kozlik Wall, Patterson, Burr

Voted No: Arnold

Motion Carried

**11. City Council will be asked to consider Resolution 2013-44 to ensure compliance with Public Act 95 of 2013 by the City of South Haven electric utility.**

*Background Information:* On July 1, 2013, Gov. Snyder signed Senate Bill 284 creating Public Act 95 of 2013. The bill authorizes the Public Service Commission to raise up to \$50 million annually for low income energy assistance in Michigan. The money will be placed in the Low Income Energy Assistance Fund (LIEAF) and will be dispensed by the Department of Human Services. The legislation requires that the money collected from a geographic area is returned, to the extent possible, to that geographic area. Low income customers will be able to receive State assistance to pay electric, natural gas, and propane bills.

In order to raise the \$50 million annual stipend, the legislation requires all electric utilities in Michigan, including municipal utilities, to place a monthly surcharge on customer bills and send the collected money to the State on an annual basis. The monthly surcharge will be established by the State but will not be more than \$1.00 per customer. A customer who has multiple meters at their residence is to be billed the surcharge on only one meter.

The legislation does include an opt-out provision for all utilities. Each year, a utility may file a notice with the Public Service Commission by July 1 indicating that they desire to opt out of collecting the surcharge. A utility that opts out may not shut off service to any residential customer from November 1 to April 15 for nonpayment of a delinquent account. The deadline for the opt-out notice has been extended to July 24, 2013 to permit municipal utilities to consider the opt-out provision. Michigan's two largest electric providers, Consumers Energy and DTE, both intend to collect the surcharge. Low income customers of a utility that opts out of collecting the surcharge are still eligible to apply for assistance from the Department of Human Services.

The Michigan Municipal Electric Association (MMEA) is performing a joint filing on July 24, 2013 on behalf of its 41 members, including South Haven. As of July 3, 4 members have elected to collect the surcharge and 6 have elected to opt out.

In 2009, the legislature passed a series of bills that placed winter shutoff restrictions on municipal utilities. These bills place restrictions on performing winter shutoffs for certain customers. Eligible military customers, critical care customers, and senior citizens are provided certain shutoff protections by these bills. In addition, there are specific steps outlined that must be followed by the City to legally shut off a residential customer during the heating season (defined as November 1 through March 31). Due to the complexity of the legislation, the City's practice has been to restrict all residential shutoffs during the heating season. If the City elects to opt out of collecting the low income surcharge, we will not be permitted to shut off service to any residential customer from November 1 to April 15 for nonpayment of a delinquent account. Since we already limit winter shutoffs, utility operations will not be substantially changed if the City elects to opt out.

A special meeting of the Board of Public Utilities was held on Thursday, July 11, 2013. The Board reviewed Public Act 95 and recommends that Council pass a resolution opting out of participating in Public Act 95 of 2013. The Board's recommendation notes that Public Act 95 penalizes electric customers to subsidize gas customers. In addition, concerns were raised about the lack of a definition of geographic area in Public Act 95 and the low income funds being transferred to other parts of the state.

Moved by Gruber to approve Resolution 2013-44 to ensure compliance with Public Act 95 of 2013 by the City of South Haven electric utility. Seconded by Klavins.

Voted Yes: All. Motion carried.

## **12. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda**

Jessica Nickel – Asked where the City is with their review of the utility late fees.

Mary Lynn Bugge – Concerned with bike riders not riding safely. Also concerned with the flashing light at Aylworth and Broadway.

David Ashen – Agrees with Mrs. Bugge about the bike riders. Voiced concerns about records missing at City Hall.

## **13. City Manager's Comments**

## **14. Mayor and Councilperson's Comments**

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City Hall, Council Chambers  
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Klavins – People driving please assume that the bikes do not know where to go or who has right of way.

Arnold – Thanks to all the guests tonight for showing up. Thanks to city staff for coming up with answers to all questions from last week. Happy anniversary to the Fitzgibbons!

Patterson – Thanks to all the citizens who came out tonight. We do listen and take into consideration your concerns. Hope everything goes positively at the basketball tournament.

Gruber – Thanks to staff for all your work. Hopes that the basketball event goes well to prove themselves for future events. Beach flags look great.

Kozlik Wall – 4<sup>th</sup> of July was awesome. Thanks to Mayor Burr for raising the money for this event. Props to city employees for a great job with cleanup as the city was very clean by early the next morning. Hoping that the basketball event turns out wonderful.

Burr – Reminder that the Maritime Museum is having a fish boil on Saturday as a fundraiser. Most of the fish were caught locally. Come out and have a good time.

## 15. Adjourn

Moved by Patterson to adjourn. Seconded by Kozlik Wall.

Voted Yes: All. Motion carried. Meeting adjourned at 8:30 p.m.

RESPECTFULLY SUBMITTED,



Michelle Coffey  
Deputy City Clerk

Approved by City Council