

**PROCEEDINGS
OF
CITY COUNCIL
OF THE
CITY OF LOWELL
MONDAY, OCTOBER 07, 2019, 7:00 P.M.**

1. **CALL TO ORDER; PLEDGE OF ALLEGIANCE; ROLL CALL.**

The Meeting was called to order at 7:01 p.m. by Mayor DeVore and City Clerk Sue Ullery called roll.

Present: Councilmembers Greg Canfield, Marty Chambers, Cliff Yankovich, Jim Salzwedel, and Mayor DeVore.

Absent: None.

Also Present: City Manager Michael Burns, Chief of Police Steve Bukala, City Clerk Sue Ullery, DPW Director Dan Czarnecki, City Attorney Dick Wendt and, Lowell Light & Power General Manager Steve Donkersloot.

The meeting was then turned over to Chief Steve Bukala who announced Police Sargent Christopher Hurst has been with the City of Lowell for 25 years and thanked him for his outstanding service and presented Hurst with two Plaques. Sargent Christopher Hurst then gave a speech of how he came to work for the City of Lowell and thanked everyone.

The council all agreed to adjourn for 10 minutes to have cake for the Police Sargent Christopher Hurst's 25 years of service with the City of Lowell.

2. **APPROVAL OF THE CONSENT AGENDA.**

- Approval of the Agenda.
- Approve and place on file the Committee of the Whole, Regular and Closed minutes of the September 16, 2019 City Council meetings.
- Authorize payment of invoices in the amount of \$2,460,567.50.

IT WAS MOVED BY SALZWEDEL and seconded by CANFIELD to approve the consent agenda as written.

YES: Councilmember Salzwedel, Councilmember Yankovich, Councilmember Chambers, Councilmember Canfield and Mayor DeVore.

NO: None.

ABSENT: None.

MOTION CARRIED.

3. **CITIZEN COMMENTS FOR ITEMS NOT ON THE AGENDA.**

There were no comments.

4. **OLD BUSINESS**

a. Adult Use Marihuana.

City Manager Michael Burns stated at our last City Council meeting, a citizen shared concerns about lighting requirements in the draft regulatory ordinance. City Administration looked into this further and we can report this language came from ordinances in California and Colorado. Those states have

energy restrictions as there are issues with energy transmission, especially in California. After further review, City Administration would recommend striking this lighting requirement from the proposed ordinance.

City Manager Michael Burns also stated according to the new state law emergency rules for recreational marihuana, for the first 24 months after the state begins accepting adult use marijuana license applications (starting November 1, 2019), the state will only accept recreational license applications from persons who already have a medical marihuana license. Burns wanted to bring this to the council's attention to be sure they did not want to revisit opting in for the medical marihuana.

Council all agreed not to revisit medical marihuana. Council is expecting to take action on the recreational marihuana ordinance at the October 21, 2019 City Council meeting.

- b. City Income Tax.
 - i) Update

City Manager Michael Burns stated the City of Lowell has held two of the three informational meetings. They were pretty well attended and received. Obviously opinions on both sides of the argument but the conversations have been civilized and we have really tried to explain as simply as possible what the problem is and what the possible solutions are. There is one more informational meeting on Wednesday, October 16, 2019 at 6 pm in the Council Chambers. Burns then showed the video regarding the Lowell City Income Tax proposal.

- c. Fire Authority Proposal.

Mayor DeVore briefed the Councilmembers on where they are with the proposal and will revisit after the next Fire Authority meeting. DeVore was not clear where the Township was on voting on the proposal, but know they need some questions answered.

IT WAS MOVED BY DEVORE and seconded by CANFIELD to table the Fire Authority Proposal until the City Council meeting on October 21, 2019.

YES: 5. NO: None. ABSENT: None. MOTION CARRIED.

- d. Resolution 29-19 – Modification to Resolution 24-19.

City Manager Michael Burns stated in June, City Council approved Resolution 24-19 stating it was the City Council's intent to utilize funds generated from the City Income Tax to be used for street improvements after offsetting the equivalent of the five mills of revenue that was reduced and for the costs of administering the income tax. This information was shared with residents who attended the September 18, 2019 Income Tax Informational meeting and they showed concern that this language may give council the chance **not** to use the funds for Street Improvements. It was suggested that the resolution be modified to state that income tax revenue shall only be used for street improvements after offsetting the expenditures affected by the five mill reduction and income tax administrative costs. Resolution 29-19 was drafted to make this suggested modification. This resolution would also void the action taken through Resolution 24-19.

IT WAS MOVED BY CHAMBERS and seconded by SALZWEDEL to approve Resolution 29-19 as presented.

YES: Councilmember Yankovich, Councilmember Chambers, Councilmember Canfield, Mayor DeVore, and Councilmember Salzwedel.

NO: None.

ABSENT: None.

MOTION CARRIED.

e. Resolution 30-19 Chamber of Commerce Building Lease.

City Manager Michael Burns stated the lease between the City and the Chamber of Commerce for the use of the building they operate in, expires on April 30, 2020. Over the summer, Burns has been working with Liz Baker regarding the renewal of the lease as directed by the City Council. We have a tentative agreement on the lease that would require City Council approval. The new lease would be for an additional 10 years beginning on May 1, 2020 as this is the limit requires per the City Charter. The lease still remains a \$1 per year for the use of the facility. This building will be used as is and any improvements to it will be done at the Chamber of Commerce's expense. The only major difference to this lease and the previous lease is utility costs. The previous lease had a \$200 cap for utilities meaning the City would cover in some instances the amount for utilities over this amount. Going forward, all utility expenses will be paid in full by the Chamber of Commerce.

IT WAS MOVED BY DEVORE and seconded by CHAMBERS to approve Resolution 30-19, a new lease agreement with the Lowell Area Chamber of Commerce as presented.

YES: Councilmember Chambers, Councilmember Canfield, Mayor DeVore, Councilmember Salzwedel, and Councilmember Yankovich.

NO: None.

ABSENT: None.

MOTION CARRIED.

f. Resolution 31-19 Revising Resolution 08-19.

City Manager Michael Burns stated in February, the Lowell City Council approved Resolutions 08-19 granting an Industrial Facility Tax Credit for five years to King Milling for the creation of their warehouse facility. Our application has been submitted to the Michigan Department of Treasury as required per the statute. The application is being held up by them because of the following language is needed: **WHEREAS**, the aggregate state equalized value ("SEV") of real and personal property exempt from ad valorem taxes within the City, after granting this certificate, will exceed 5% of an amount equal to the sum of the SEV of the property proposed to be exempt pursuant to the King Milling application plus the aggregate SEV of property exempt under certificates previously granted pursuant to Act 198 and currently in effect. Resolution 31-19 has been drafted to correct the concern from Treasury. We have debated the necessity of this language as it is not required in the statute for several months. However, Treasury has informed us they will not proceed without this language.

IT WAS MOVED BY CANFIELD and seconded by SALZWEDEL to approve Resolution 31-19 as presented.

YES: Councilmember Canfield, Mayor DeVore, Councilmember Salzwedel, Councilmember Yankovich, Councilmember Chambers.

NO: None.

ABSENT: None.

MOTION CARRIED.

5. **NEW BUSINESS**

a. SUEZ Presentation.

City Manager Michael Burns stated our contract with Suez for operating our Wastewater Treatment Plant expires on June 30, 2020. The City will need to decide if we want to renew our contract, go out for bid and/or consider bringing this task in house. Burns then introduced Michael Bowen, Regional Manager from Suez who gave a presentation to discuss what Suez provides the City of Lowell in regard to wastewater services and what they can provide in the future. Then Brian VanderMeulen with Suez gave a

brief presentation on the partnership between Suez and the City of Lowell.

b. Resolution 32-19 Resolution to adopt a local pavement warranty program.

DPW Director Dan Czarnecki stated as part of the Transportation Funding Package of 2015, the Michigan Legislature created a requirement (MCL 247.662, 247.663) that each local road agency in Michigan adopt a Local Pavement Warranty Program acceptable to the Michigan Department of Transportation (MDOT). The resulting Michigan Local Agency Pavement Warranty Program is the statewide accepted format that local agencies can use for hot mix asphalt (HMA) and plain jointed concrete paving projects on public roads and streets, if they opt to utilize a warranty on a project. The overall goal of the Michigan Local Pavement Warranty Program is to have one standardized method for applying pavement warranties on local agency projects, which provides a consistent, quantifiable and transparent program that pavement contractors can recognize and implement.

Czarnecki continued, the Warranty Program must be adopted by every community, and every community must consider a warranty on each project utilizing any state or federal funding that also includes \$2 million or more in paving-related components. For paving projects under \$2 million or paving projects not funded with state or federal funding, the community can decide if they wish to include the Warranty Program as part of their project. Communities must annually report on projects with \$2 million or more in paving related items, regardless of whether they implemented a warranty or not. The appropriate documentation must be included within any bid documents for paving projects. The documents include special provisions (boilerplate language, concrete, HMA, location, pass-through warranty bond) necessary forms (warranty bond forms, contract forms), and guidelines for the program. Our engineers have copies of all the pertinent documentation and will handle their inclusion when they put together street project specifications. The City of Lowell must agree by resolution to adopt the Michigan Local Agency Pavement Warranty Program, including the documentation provided by the program. Then, the City must agree by resolution to implement the Michigan Local Agency Pavement Warranty Program.

IT WAS MOVED BY CANFIELD and seconded by CHAMBERS that Lowell City Council adopt Resolution 32-19 adopting the Michigan Local Agency Pavement Warranty Program, with accompanying documents.

YES: Councilmember Salzwedel, Councilmember Yankovich, Councilmember Chambers, Councilmember Canfield, and Mayor DeVore.

NO: None.

ABSENT: None.

MOTION CARRIED.

c. Resolution 33-19 Resolution to implement a local pavement warranty program.

IT WAS MOVED BY YANKOVICH and seconded by SALZWEDEL that Lowell City Council adopt Resolution 33-19, implementing the Local Agency Pavement Warranty Program and annually report in accordance with the law.

YES: Councilmember Yankovich, Councilmember Chambers, Councilmember Canfield, Mayor DeVore, and Councilmember Salzwedel.

NO: None.

ABSENT: None.

MOTION CARRIED

d. Resolution 34-19 Sewer Truck.

City Manager Michael Burns stated in the current approved budget, funds were set aside to correct an accounting task that has been a nuisance for City staff. Currently, usage of our equipment is charged a rental amount for time used and set forth by the Michigan Department of Transportation. The rental amounts are allocated to the Equipment Fund, and funds can be used for maintenance and purchase of

equipment and fleet.

Years ago, the city chose to have the water fund purchase a vehicle that the sewer fund paid rental rates on when used for those tasks. When that truck was to the point it needed to be replaced, the sewer fund bought the next truck (in 2018) and the water fund pays rentals when used for sewer tasks. The problem lies when staff accounts for rentals. Since every other piece of equipment is charged to the equipment fund, this vehicle isn't always properly tracked and later we have to correct this. All equipment rentals should be charged to the equipment fund and all equipment should be purchased from the Equipment Fund. In most cities in Michigan this is common practice. We currently do not charge rentals of police cars. However, we are looking at adding this so the Equipment Fund purchase police vehicles.

Burns continued, in order for the Equipment Fund to charge rentals for the sewer truck, it has to be purchased by the Equipment Fund. We have budgeted the depreciated value of the truck and utility box in the amount of \$57,310 to be paid to the Wastewater Fund from the Equipment Fund. Resolution 34-19 allows this correction to be made.

IT WAS MOVED BY YANKOVICH and seconded by CHAMBERS that Lowell City Council approve Resolution 34-19 a Resolution approving the transfer of a truck including dump body from the City's wastewater fund to the City's equipment fund and other matters related thereto.

YES: Councilmember Chambers, Councilmember Canfield, Mayor DeVore, Councilmember Salzwedel, and Councilmember Yankovich.

NO: None.

ABSENT: None.

MOTION CARRIED.

e. Resolution 35-19 – MDOT Trunkline Maintenance Contract.

DPW Director Dan Czarnecki stated the City of Lowell performs work on Main St/M-21. This street is an MDOT trunkline. Work performed here must meet MDOT requirements in order for the City of Lowell to receive reimbursement from MDOT for the work. Some of the work the DPW performs that can be reimbursed includes painting of the crosswalks and parking spaces, snow removal from along the side of the street, snow removal from the sidewalks over the bridges, and other activities requested by MDOT. In order to access the reimbursement funds the City needs to authorize and sign a standard Trunkline Maintenance Contract with MDOT. MDOT requires the city to authorize an official to sign the document, via a certified resolution.

IT WAS MOVED BY CHAMBERS and seconded by YANKOVICH that City Council adopt Resolution 35-19 a Resolution approving the MDOT Trunkline Maintenance Contract, and authorize City Manager Michael Burns, to act as agent on behalf of the City of Lowell and authorize Mayor DeVore to sign the contract documents with MDOT, Contract #2019-0720, for Trunkline maintenance.

YES: Councilmember Canfield, Mayor DeVore, Councilmember Salzwedel, Councilmember Yankovich, and Councilmember Chambers.

f. City Hall LED Lighting.

Chief of Police, Steve Bukala stated he has sent out a request for a proposal to have the remaining light ballast in City Hall and the Council Chambers converted over to LED lighting in an attempt to lower the city energy bill. I requested RFP's to Lite's Plus, Flat River Electric and Rickert Electric. Lite's Plus was the lowest bid of \$10,671.90. The original bid included a Lowell Light & Power Rebate of \$1780, however since then Energy Smart has locked in that rebate as \$2620.52. This will bring the overall cost down to \$8051.38. The rebate comes to the city after the installation in the form of a check.

IT WAS MOVED BY YANKOVICH and seconded by CHAMBERS to proceed with the lone bid of \$10,671.90 from Lite's Plus.

YES: Mayor DeVore, Councilmember Salzwedel, Councilmember Yankovich, Councilmember Chambers, and Councilmember Canfield.

NO: None.

ABSENT: None.

MOTION CARRIED.

g. Vaping Facility Moratorium.

City Manager Michael Burns stated a request was made to the City Council at the September Planning Commission meeting regarding facilities that sell vaping equipment in the City. They would like the City Council to consider a six-month moratorium restricting any more vaping facilities to be opened in the City Limits. The City Attorney and I have researched this matter and are not aware of any other municipalities in Michigan that are taking any action on this. The current action by the State of Michigan is being legally challenged and we are concerned any action the City Council would take on this matter, would be legally challenged. The City Attorney and I are not convinced we would legally be able to place a restriction on this and it would be costly to the City as the vaping lobbyists' would try to seek legal action against us if we move forward. Burns continued he believes this is a matter that should be addressed first in the Federal Government and the State of Michigan before we as a municipality look into this further.

The Councilmembers all agreed to leave this matter alone.

6. **BOARD/COMMISSION REPORTS.**

Councilmember Yankovich stated he attended the Historical District meeting, a gentleman will be painting and he sounds very good.

Councilmember Sazwedel stated the Arbor Board will meet Monday, October 14, 2019.

Councilmember Canfield stated the Park & Rec Board met and DPW Director Dan Czarnecki attended and gave some good advice from his expertise with his previous employer and he is going to help them out with some contract language.

Councilmember Chambers stated he missed the Planning Commission joint session with the Townships because he was at a City Council meeting. Light & Power Board meets next week Thursday, October 17, 2019 at 6:00 pm.

Mayor DeVore stated he attended the Historic District Commission as a citizen in September and Vision is next week to talk about the cleanup day which was a great success. Fire Authority is Monday, October 14, 2019 at 3:30 pm and DDA is on Thursday, October 17, 2019 at noon.

7. **MANAGER'S REPORT.**

City Manager Michael Burns reported on the following:

- Eastern Equine Encephalitis concerns are continuing to evolve. A week and a half ago there was virus

contraction case in Kent County, somewhere in Oakland County. The protocol is if there is a case in your area, the State will come in and spray for mosquitos. Kalamazoo County is the only County that has taken on spraying County wide. Not sure what Kent County is going to do. We are paying attention to this and looking to see how this is going to play out. As a City, we could look at spraying if the Council wants to look into this. It is not a very cheap practice and there is no guarantee it's going to get everything. There is supposed to be the first frost tonight so possibly this matter may be taken care of.

- Sidewalks – Earlier in the winter we approved a contract with Groundhawg Excavating to take on lot of our sidewalk repairs at the parks and other areas in the city as part of our LCTD Contract we received in 2018. They will be beginning work in two weeks.
- Continuing to work with MERS and have a conference call with them Friday, October 11, 2019. We are looking at reducing costs going forward and we are having an evaluation study being done currently to address the concerns of the Council but also trying to reduce our costs and address our finding liability.

8. **APPOINTMENTS.**

The Downtown Development Authority has an appointment opening.

The Construction Board of Appeals has an appointment opening.

9. **COUNCIL COMMENTS.**

Councilmember Yankovich stated he wanted to recognize that at the last Council meeting, a gentleman had pointed out a concern with the lighting phrase in our Marihuana (draft) Regulatory Ordinance. Council, and the City manager listened and looked into it, and have now addressed it. That is how this is supposed to work.

Mayor DeVore stated Community day clean-up was awesome. MML was a great conference and in that part of town in Detroit there was an amazing difference from five years earlier. They have really made a central push towards walkability and we could learn from what they are doing.

10. **MOTION TO GO INTO CLOSED SESSION.**

IT WAS MOVED BY SALZWEDEL and seconded by CHAMBERS to go into closed session at 8:39 p.m.

YES: Councilmember Salzwedel, Councilmember Yankovich, Councilmember Chambers, Councilmember Canfield, and Mayor DeVore.

NO: None.

ABSENT: None.

MOTION CARRIED.

11. **MOTION TO GO BACK INTO OPEN SESSION.**

IT WAS MOVED BY SALZWEDEL and seconded by CANFIELD to go back into open session at 9:00 p.m.

YES: Councilmember Chambers, Councilmember Canfield, Mayor DeVore, Councilmember Salzwedel,
and Councilmember Yankovich.

NO: None.

ABSENT: None

MOTION CARRIED.

12. **ADJOURNMENT.**

IT WAS MOVED SALZWEDEL and seconded by CHAMBERS to adjourn at 9:01 p.m.

DATE:

APPROVED:

Mike DeVore, Mayor

Sue Ullery, Lowell City Clerk