

Fraser City Council - Regular Meeting
Thursday – October 9, 2014 - 7:00 P.M.
Municipal Building

A Regular Meeting of the Fraser City Council was conducted on the above date at the City Municipal Building, located at 33000 Garfield Road, Fraser, County of Macomb, Michigan.

Present: Mayor Hagerty and Council Members Accavitti, Carnagie, Cilluffo, Hemelberg, Jennings and Morelli
Absent: None
Also Present: Richard Haberman, City Manager
Kathy Kacanowski, City Clerk
Jack Dolan, City Attorney

1. **Call Meeting to Order** - Mayor Hagerty called the regular meeting to order at 7:00 p.m.

a) Recognition and comments regarding the passing of former Mayor Pro Tem Jan Wilson. Council Members and State Representative Marilyn Lane shared thoughts and stories while Mayor Hagerty provided Mrs. Wilson's daughter, Amy, with a certificate of recognition honoring the memory of her mother.

2. **Pledge of Allegiance**

3. **Approval of Agenda**

Member Cilluffo moved, seconded by Member Carnagie, TO APPROVE THE AGENDA AS PRESENTED.

The motion carried unanimously.

4. **Citizen Participation on Agenda Items**

Ken Imler read a letter from Warren Damman, Ameristeel, 33900 Doreka Dr. John Elkins, building owner of 33441 James J Pompo Dr. Salvatore Audia, 31253 Utica Road

5. **Presentations**

a) Turning Point representatives, Keana Davis and Dominica Tokarski, spoke regarding October being National Domestic Violence Awareness Month.

b) Laura Edgehill, Fraser School Board Vice President, spoke regarding the Fraser School District's upcoming ballot proposal for bond renewal.

d) City Manager Haberman spoke regarding the City's upcoming ballot proposal to seek bonds for street and infrastructure repairs and rehabilitation. Proposal is for 1.977 mils for five years and informational meetings have been scheduled for October 27th at 10am and 7pm at the Activity Center.

6. **Public Hearings**

a) Public Hearing on the request from Mold-Tech North America DBA: Standex International, located at 34497 Kelly Road, for an IFT exemption in the amount of \$2,316,526.

Camille Silva, Macomb County Planning and Economic Development, and Daniel Backing, Mold-Tech, spoke regarding this item.

Mayor Hagerty opened the Public Hearing at 7:51 p.m. With no public to be heard, Mayor closed the Public Hearing at 7:52 p.m.

Mayor Hagerty moved, seconded by Member Morelli, TO APPROVE THE REQUEST FROM MOLD-TECH NORTH AMERICA DBA: STANDEX

Fraser City Council - Regular Meeting
Thursday – October 9, 2014 – 7:00 P.M.
Page Two

INTERNATIONAL, LOCATED AT 34497 KELLY ROAD, FOR AN INDUSTRIAL FACILITIES TAX EXEMPTION FOR PERSONAL PROPERTY IN THE AMOUNT OF \$2,316,526 FOR 12 YEARS.

The motion carried unanimously.

7. Consent Agenda

Member Carnegie moved, seconded by Member Cilluffo, to APPROVE THE CONSENT AGENDA ITEMS AS PRESENTED.

- a. Approval of Minutes of the Regular Council Meeting of September 11, 2014
- b. Approval of Bills for the Month of September 2014 in the amount of 862,980.89
- c. Receive and file Minutes of the September 3, 2014 Planning Commission meeting.
- d. Approval of the Municipal Credit and Community Credit Contract (SMART) for Fiscal Year 2015.

The motion carried unanimously.

8. Requests For Council Action

- a. **Request Council authorize the transfer of \$110,000 from major street fund to local street fund and appropriate this money for urgently needed pavement preservation of Clearview.**

Michael Lesich, 15201 Fairview, spoke on this item.

Member Jennings moved, seconded by Member Cilluffo, TO AUTHORIZE THE TRANSFER OF \$110,000 FROM MAJOR STREET FUND TO LOCAL STREET FUND AND APPROPRIATE THIS MONEY FOR URGENTLY NEEDED PAVEMENT PRESERVATION OF CLEARVIEW.

The motion carried unanimously.

- b. **Request Council consider a change in the water rate system by elimination of the RTS for fire suppression systems and increasing the RTS for commercial and industrial customers from the current \$6.00/unit to \$8.00/unit. This proposal is a revenue neutral proposal.**

Mayor Hagerty explained this alternative plan would remove fire suppression fee and instead increase by \$2/unit to all commercial industrial businesses. Manager Haberman stressed this is not a tax, it is a fee.

The following citizens spoke on this topic:

Jay Nelson, Complete Prototype

Pat Boxman, Consolidated Document Solutions

Dennis, Autocon on James J Pompo Dr

Bob Silman, Nova Industrial and Deluxe Development

Pat Ryan, Ziedel Tool & Die, Fifteen Mile

Ken Imler, Deluxe Development/Hawk Industrial

Discussion ensued with council members providing their thoughts on this item.

Mayor Hagerty moved, seconded by Member Carnegie, to APPROVE A CHANGE IN THE WATER RATE SYSTEM BY ELIMINATION OF THE RTS FOR FIRE SUPPRESSION SYSTEMS AND INCREASING THE RTS FOR COMMERCIAL AND INDUSTRIAL CUSTOMERS FROM THE CURRENT \$6.00/UNIT TO \$8.00/UNIT.

Fraser City Council - Regular Meeting
Thursday – October 9, 2014 – 7:00 P.M.
Page Three

Mayor asked for a roll call vote:

Accavitti - no	Hemelberg - yes
Carnegie - yes	Jennings - no
Cilluffo - no	Morelli - no
Hagerty - yes	

The motion failed 3-4

Member Cilluffo requested a break at 8:58 p.m.; Mayor denied. Member Cilluffo briefly left meeting and returned at 9:00 p.m.

- c. Request Council discuss and amend the resolution accepting MDNR Development Project Grant increasing the cash matching amount from \$64,100 to \$104,000 and reducing the amount from donated labor and material a like amount. Additional funds to come from the gambling forfeiture account for the purpose of completing Phase 1 of the Barrier Free Park.**

Linda Davis Kirksey and Vania Apps spoke regarding this project noting that Phase 1 is moving forward and once complete, they can apply for additional grant funding.

Member Carnegie moved, seconded by Member Cilluffo, to AMEND THE RESOLUTION ACCEPTING MDNR DEVELOPMENT PROJECT GRANT INCREASING THE CASH MATCHING AMOUNT FROM \$64,100 TO \$104,000 AND REDUCING THE AMOUNT FROM DONATED LABOR AND MATERIAL A LIKE AMOUNT. ADDITIONAL FUNDS TO COME FROM THE GAMBLING FORFEITURE ACCOUNT FOR THE PURPOSE OF COMPLETING PHASE 1 OF THE BARRIER FREE PARK.

The motion carried unanimously.

- d. Request Council discuss and take action with respect to amending the ordinance setting forth definitions and regulations regarding the sale, possession and use of tobacco, nicotine and devices used for their ingestion, providing for penalties, repealer, severability, and effective date.**

Attorney Dolan explained this ordinance was brought forth due to the Public Safety Director's dialogue and meeting regarding concerns with youths using e-cigarettes. Michigan enacted legislation in June but it has not been signed by the governor. This ordinance limits purchase and use to only those over age eighteen and if state law passes, it will be enforced and parallel the local ordinance.

The following citizens spoke on this item:

Anna Cameron, 34273 Garfield Circle
Lt. Dan Kolke, Fraser Public Safety

Member Cilluffo moved, seconded by Member Jennings, to APPROVE AMENDING ORDINANCE SETTING FORTH DEFINITIONS AND REGULATIONS REGARDING THE SALE, POSSESSION AND USE OF TOBACCO, NICOTINE AND DEVICES USED FOR THEIR INGESTION, PROVIDING FOR PENALTIES, REPEALER, SEVERABILITY AND EFFECTIVE DATE.

ORDINANCE NO. 370

AN ORDINANCE SETTING FORTH DEFINITIONS AND REGULATIONS REGARDING THE SALE, POSSESSION AND USE OF TOBACCO, NICOTINE AND DEVICES USED FOR THEIR INGESTION, PROVIDING FOR PENALTIES, REPEALER, SEVERABILITY, AND EFFECTIVE DATE.

Fraser City Council - Regular Meeting
Thursday – October 9, 2014 – 7:00 P.M.
Page Four

THE CITY OF FRASER ORDAINS:

Section 1. Preamble.

WHEREAS, in order to preserve, promote and protect public health, safety and welfare and to advance the legitimate rational regulation of nicotine and tobacco products, including furnishing, giving, selling, possession and use, in order to promote the safety and well being of minors, the safety and well being of members of the public, the City enacts the ordinance hereinafter.

Section 2. Article VIII Offenses Affecting Minors. Division 4, is hereby revised and amended as follows:

DIVISION 4. SMOKING AND POSSESSION OF TOBACCO PRODUCTS PROHIBITED.

Sec. 16-260. Definitions.

The following words, terms and phrases when used in this division have the meanings provided except where the context clearly indicates a different meaning:

- a. *Nicotine product.* Means the highly toxic alkaloid found in tobacco presented in tobacco, or in some other form for ingestion, including, but not limited to water soluble nicotine containing substances, and devices which deliver nicotine through vapor or other means for ingestion, such as electronic cigarettes, hookah pens, or other similar devices.
- b. *School District.* Means a school district, local school district, or intermediate school district, as those terms are defined in the school code of 1976 Act No. 451 of the Public Acts of Michigan of 1976 (MCL 380.1 et. seq.), as amended or a charter school, consortium, or cooperative arrangement, or any combination of these.
- c. *School Property.* Means a building facility, or structure, or other real estate owned, leased, occupied, or controlled by a school district.
- d. *Smoking or Smoke.* Means the possession by a person of a lighted cigar, cigarette, pipe, or other lighted smoking device, or activated device which delivers nicotine through vapor or other means, or ingestion electronically such as electronic cigarettes, hookah pens, or other similar devices.
- e. *Tobacco Products.* Means preparation of tobacco to be ingested by any means including but not limited to smoked, vaporized, chewed or inhaled.
- f. *Use of a Tobacco Product and/or Nicotine Product.* Means any of the following:
 - 1. The possession of a lighted cigar, cigarette, pipe, or other lighted smoking device.
 - 2. The possession of a device which delivers nicotine through vapor, or other means which is for ingestion, including, but not limited to electronic cigarettes, hookah pens, or other similar devices.
 - 3. The ingestion of a tobacco product by any means.

Sec. 16-261. Furnishing Tobacco Products to Minors Prohibited.

Fraser City Council - Regular Meeting
Thursday – October 9, 2014 – 7:00 P.M.
Page Five

- a. No person shall furnish, give, or sell any tobacco product or nicotine product in any form to a person under the age of eighteen (18) years of age.
- b. A person who violates this section shall be guilty of a misdemeanor punishable by a fine of not more than fifty (\$50.00) dollars for each offense.

Sec. 16-262. Required Signage Sales to Minors.

- a. A person who sells nicotine products or tobacco products at retail shall post, in a place close to the point of sale, highly visible to both employees and customers, a sign produced by the Department of Public Health which includes the following statement:

The purchase of tobacco products by a minor under eighteen (18) years of age and the provision of tobacco products to a minor are prohibited by law. A minor unlawfully purchasing, or using products, is subject to criminal penalties.
- b. A person furnishing tobacco or nicotine products shall additionally post in a place close to the point of sale and highly visible to both employees and customers, a sign stating as follows:

The purchase of nicotine products including electronic cigarettes and similar devices by a minor under eighteen (18) years of age and the provision of nicotine products to a minor, are prohibited by law. A minor unlawfully purchasing, or using nicotine products is subject to criminal penalties.
- c. If the sign required under either subsection a and b is more than six (6) feet from the point of sale, it shall be 5 ½" by 8 ½", and the statement required shall be printed in thirty-six-point, boldface type. If the sign required under the foregoing subsections is six (6) feet or less from the point of sale, it shall be two (2) inches by four (4) inches, and the statement required shall be printed twenty-point boldface type. "A person who sells tobacco products at retail" means a person who in the ordinary course of business, engages in whole or in part in the retail sale of tobacco products subject to state sales tax.

Sec. 16-263. Tobacco and Nicotine Products on School Property.

- a. Except as provided under subsection c, a person shall not smoke a tobacco product or nicotine product on school property.
- b. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than fifty (\$50.00) dollars.
- c. Subsection a does not apply to that part of school property consisting of outdoor areas including but not limited to an open air stadium during either of the following time periods:
 - 1. Saturdays, Sundays and other days in which there are no regularly scheduled school hours.
 - 2. After 6:00 p.m. on days during which there are regularly scheduled school hours.

Sec. 16-264. Smoking Use or Possession of Tobacco and Nicotine Products by a Minor in Public; Penalty, Health Promotion and Risk Assessment Program.

Fraser City Council - Regular Meeting
Thursday – October 9, 2014 – 7:00 P.M.
Page Six

- a. A person under the age of eighteen (18) years shall not possess, smoke, or use nicotine products or tobacco products on a public highway, street, alley, park, or other lands used for public purposes, or in a public place of business, or amusement.
- b. A person who violates this section is guilty of a civil infraction punishable by a fine of not more than fifty (\$50.00) dollars for each offense. Pursuant to a probation order, the court may require a person who violates this section to participate in a health promotion and risk reduction assessment program, if available. A probationer who is ordered to participate in the health, promotion and risk reduction assessment program under this section, is responsible for the cost of participating in the program. In addition, a person who violates this section is subject to the following:
 1. For a first violation, not more than sixteen (16) hours of community service in a hospice, nursing home or long term care facility, or participation in a health promotion and risk reduction program as ordered by the court.
 2. For a second violation, in addition to participation in the health, promotion and risk reduction program, not more than thirty-two (32) hours of community service in a hospital, nursing home, or long term care facility.
 3. For a third or subsequent violation, in addition to participation in a health promotion and risk reduction program, not more than forty-eight (48) hours of community service in a hospice, nursing home, or long term care facility.

Section 3. Severability. If any article, section, subsection, sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of remaining provisions, it being the intent of the city that this ordinance shall be fully severable.

Section 4. Repealer. All ordinances or parts of ordinances in conflict herewith are repealed only to the extent to give this ordinance full force and effect. Division 3 Regulations Relative to Minors, Sections 12-40 through 12-42 are hereby repealed. The reference shall be made at the former location of 12-40 to see Chapter 16, Division 4.

Section 4. Effective Date. This ordinance being deemed an emergency ordinance shall be effective immediately upon adoption and publication due to the emergency nature of the same.

The motion carried unanimously.

Attorney Dolan explained items e and f coordinate with each other and it was determined item f should be considered first.

Member Accavitti moved, seconded by Member Carnagie, to AMEND THE AGENDA TO CONSIDER ITEM 8f BEFORE ITEM 8e.

The motion carried unanimously.

- f. **Request Council discuss and take action with respect to the ordinance amending Chapter 2, Article 1, Section 2-1 Appointment of officers and employees establishing certain positions as administrative offices pursuant to**

Fraser City Council - Regular Meeting
Thursday – October 9, 2014 – 7:00 P.M.
Page Seven

the charter section 4.6 and providing for appointment of administrative officers and employees, incorporating previous sections of section 2.1 and providing for repealer, severability and effective date.

Attorney Dolan provided an explanation of the proposed amendments. Mayor Hagerty presented a letter dated June 16, 1994 from Mayor Joseph Blanke to Kathy Blanke. He read a portion of the letter that referred to a unanimous council decision regarding Mrs. Blanke's employment status and compensation as Parks and Recreation Director and spoke of past practice by council. There was further discussion with members voicing concern over appointments being made a political issue. Member Jennings stated when the city went to a manager form of government in 1966, it made these appointments non political; however council has not followed their own procedures for years. Member Accavitti stated he does not want to interview all positions but would like council to have final concurrence or confirmation of candidate.

Member Jennings moved, seconded by Member Morelli, to HAVE CITY ATTORNEY REDRAFT THE TWO ORDINANCES TO ALLOW COUNCIL FINAL APPROVAL OF APPOINTMENT OF LIBRARY AND PARKS AND RECREATION DIRECTORS.

The motion carried 6-1
with a no vote by Mayor Hagerty.

- e. Request Council discuss and take action with respect to amending the ordinance regulating the powers and duties of the City Manager as chief administrative officer of the city amending duties relating to the appointment and discharge of administrative officers, providing for repealer, severability and effective date.**

See prior motion.

- g. Request Council change the CDBG agency appropriations as follows: reduce the \$2,500 allocation to \$800 for Wigs 4 Kids, which matches their request, eliminate the appropriation of \$2,500 to St Vincent DePaul as they had not applied and are not qualified to receive funds and appropriate \$2,459 to CHORE as requested.**

Member Cilluffo moved, seconded by Member Jennings, to AMEND THE PRIOR CDBG AGENCY APPROPRIATIONS AS PRESENTED, REDUCING THE \$2,500 ALLOCATION TO \$800 FOR WIGS 4 KIDS, ELIMINATING THE \$2,500 APPROPRIATION TO ST VINCENT DEPAUL AND ALLOCATING \$2,459 TO CHORE.

The motion carried unanimously.

9. Report of City Administration/Pending Items

Manager Haberman provided updates on the former Dairy Queen property and new oil change facility across from City Hall. He also advised two new companies will be moving to Fraser; one will occupy the former US Manufacturing building on Masonic and the second to occupy the former Miami Tile location. He also stated he hopes for public support on the upcoming road bond issue.

10. Report of Mayor and City Council/New Business

Mayor and Council discussed various topics and upcoming events. Mayor Hagerty stated he would like the city to adopt an ethics and anti-nepotism ordinance and will need Council support to direct Attorney Dolan to draft an

Fraser City Council - Regular Meeting
Thursday – October 9, 2014 – 7:00 P.M.
Page Eight

ordinance. Member Cilluffo stated this is not an agenda item and Attorney Dolan advised the agenda would need to be amended to include this item. Discussion ensued and at the consensus of Council, Attorney Dolan will provide several sample ordinances for Council to review.

11. Citizen Participation

Phil Rode
Janice Ackman, Amber Manufacturing, Malyn Dr.
Nick Pacquin, Laser Specialists, Malyn Dr.
Ken Imler, Hawk Industrial/Deluxe Development
Anna Cameron, 34273 Garfield Circle

12. Adjournment

Member Carnegie moved, seconded by Member Cilluffo, to ADJOURN THE REGULAR COUNCIL MEETING OF THURSDAY, OCTOBER 9, 2014 AT 10:28 P.M.

The motion carried unanimously.

Respectfully submitted,

Kathy Kacanowski, City Clerk

Doug Hagerty, Mayor

/kk