Minutes
Fraser City Council
July 13th, 2017 @ 7:00pm

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 Nichols and Council Members Blanke, Carnagie, Foster, Hemelberg, Lesich and Schornak
Absent:
Also Present: D. Wayne O'Neal, Manager
Kelly Dolland, City Clerk
Tim Tomlinson, City Attorney

1. **Call Meeting to Order** - Mayor Nichols called the regular meeting to order at 7:02pm

2. **Pledge of Allegiance**

3. **Approval of Agenda**

Member Lesich requested to modify agenda item 6e, on the Consent Agenda to read Receive and File Local Officers Compensation Commission meeting minutes of 5-30-2017.

Mayor NICHOLS moved, second by Member LESICH, to approve agenda as amended.

Motion carried 7-0

4. **Citizen Participation:**

5. **Presentations:**

a. Huron Academy representative Miss Sara Jagot contribution to Fraser First Boundless Park.

Representatives from Huron Academy, Ms. Jagot, Ms. Ross and Ms. Angelina presented a donation of $1,000.38 to the Fraser First Booster Club marked for the Boundless Park. Ms. Jagot stated this was a student driven fund raising event and she and the staff were very proud of the students. Principal Mark Tabot was acknowledged at the presentation.

6. **Consent Agenda**

a. Approval of Minutes of the Regular Council Meeting of 06-08-2017.
b. Approval of Minutes of the Special Council Meeting of 06-12-2017.
c. Approval of Minutes of the Special Council Meeting of 06-20-2017.
d. Approval of Minutes of the Special Council Meeting of 06-27-2017.
e. Receive and File Local Compensation Commission meeting minute of 5-31-2017.
f. Approval of Resolution for Election Voting System Grant & Authorize City Clerk to submit Grant Application.
g. Approval of Bills for the month of June 2017 in the amount of $2,446,507.54.
h. Receive and file for the month of 04-04-2017 Recreation Commission Meeting.
i. Receive and file for the month of 05-10-2017 Recreation Commission Meeting.
j. Receive and file the draft minutes of the 06-07-2017 Planning Commission Meeting.
k. Approval of MABAS Agreement – Fire Service Mutual Aid Agreement.

Member CARNAGIE moved, second by Member SCHORNAK, to approve Consent Agenda as presented.

Motion carried 7-0

7. **Requests for Council Action:**

a. Approve City Manager Contract for D. Wayne O'Neal.

Member FOSTER moved, second by Member HEMELBERG, TO TABLE THE APPROVAL OF CITY MANAGER CONTRACT FOR D. WAYNE O'NEAL.
Roll Call Vote:

Blanke	No
Carnagie	No
Foster	Yes
Hemelberg	Yes
Lesich	No
Nichols	Yes
Schornak	No

Motion failed, 4-3

Attorney Tomlinson spoke of contract modifications.
Member Schornak spoke of the revised contract and thanked Mr. O'Neal for the compromise.
Member Blanke stated Mr. O'Neal brings the experience the city needs.

Member Blanke moved, second by Member Lesich to approve City Manager contract for Mr. D. Wayne O'Neal.
Member Foster stated the contract should not begin with the top end of the pay scale, car allowance should be cut out and questioned the 8% city contribution to his retirement, she hoped council would reconsider this agreement.
Mayor Nichols repeated Member Foster concerns.
Member Schornak stated the salary for city manager advertised up to $105,000.
Member Blanke stated the city spent $14,000 to advertised for a city manager, gave a $16,000 raise to an employee who is no longer here and hired Plant Moran at a cost of $125,000.
Member Hemelberg questioned what would happen if PA-33 doesn't pass.
Member Foster stated she is not comfortable with the city manager contract; the city is spending money it does not have.
Member Carnagie stated he spoke to Mr. O'Neal and gave him credit for wanting to work for the city.

Audience to be heard:
Resident Terry Finlaw spoke on topic
Marty Prehn spoke on topic
Resident Marie Cilluffo spoke on topic
Business owner Ken Immler spoke on topic

Member BLANKE moved, second by Member LESICH, TO APPROVE CITY MANAGER CONTRACT FOR MR. D. WAYNE O'NEAL.
Roll Call Vote:

Carnagie	Yes
Foster	No
Hemelberg	No
Lesich	Yes
Nichols	No
Schornak	Yes
Blanke	Yes

Motion carried 4-3

b. Approve Extension of Rubbish Contract – Green for Life, Inc.

DPW Director BJ VanFleteren and GFL representatives Don Barretta and Ray Hernandez reference three contact agreements with the city of Fraser.
Member Blanke stated GFL provides good service to the city of Fraser and questioned the rational of the three, five and eight-year contract length.
Mr. Barretta stated most communities have an eight-ten-year contact with GFL.
Member Lesich inquired to the possibility of extending the current contract one year.
Mr. Barretta stated the longer the contract, the better the cost. Mr. Barretta spoke of the trash carts. The trash carts will be the city colors, owned by the resident and the cost of the carts will be blended in the unit rate.
Member Carnagie stated 46% of city residents utilize the 65 gallon recycle bins.
Conversation ensued.

Member FOSTER moved, second by Mayor NICHOLS, TO APPROVE PLAN OPTION 3 - UNIVERSAL TRASH PROGRAM: EXTEND THE EXISTING SOLID WASTE AGREEMENT FOR EIGHT (8) YEARS STARTING SEPTEMBER 13TH, 2017 AND RUN THROUGH SEPTEMBER 12TH, 2025. THE UNIVERSAL TRASH CART OPTION WOULD CONSIST OF PROVIDING ONE (1) 95 GALLON TO EACH RESIDENT. ALL SERVICES WOULD REMAIN THE SAME, HOUSEHOLD SOLID WASTE, YARD WASTE, BULKY WASTE AND RECYCLING SERVICE. UNDER THE OPTION, WE WOULD HOLD THE PRICE FIRM FOR THE FIRST YEAR. ANNUAL INCREASES AFTER THE FIRST YEAR OF 2 1/4 WOULD APPLY ON THE CONTRACT ANNIVERSARY DATE THEREAFTER. TO IMPLEMENT THE EIGHT-YEAR UNIVERSAL TRASH CART PROGRAM AN ADDITIONAL MONTHLY SERVICE FEE OF $1.04 WOULD BE ADDED TO EACH SERVICE UNIT.

Member Lesich questioned the delivery of the carts, - Mr. Barretta stated cart delivery is 7-9 weeks, October 2017 delivery.

Roll call vote:

Foster	Yes
Hemelberg	Yes
Lesich	No
Nichols	Yes
Schornak	Yes
Blanke	No
Carnagie	Yes

Motion carried 5-2

c. Approve Sewer Pipe Bid – Vistaway Pipe Relining.

DPW Director BJ VanFleteren stated this is not part of the SRF Grant, would be under the water and sewer budget.

Member BLANKE moved, second by Member FOSTER, TO APPROVE INLAND WATERS POLLUTION CONTROL, INC. DETROIT, MI BID PROPOSAL RELINING OF 265 FEET SEWER PIPE ON VISTAWAY IN THE AMOUNT OF $15,475.
Public to be heard - none

Motion carried 7-0

d. Approve Water Main Replacement Bid – Pipe Bursting Various Locations.

DPW Director BJ VanFleteren stated he and Mike Vigneron were pleased with the seven bid proposals received for the replacement of water mains on South Wind, East Wind, North Wind and Rainbow. Pamar Enterprises was the lowest bid, $985,947. Mr. VanFleteren stated he was pleased with the bid and has worked with Pamar Enterprises in the past and was very happy. Mr. VanFleteren also stated funding for the project would come from the 2016-2017 budget.

Member FOSTER moved, second by Mayor NICHOLS, TO APPROVE WATER MAIN REPLACEMENT PROJECT ON SOUTH WIND, EAST WIND, NORTH WIND, WEST WIND AND RAINBOW TO PAMAR ENTERPRISES, DETROIT, MI. IN THE AMOUNT OF $985,947.00.

Member Lesich inquired to the length of the project, - The project will begin mid-August 2017 with an anticipated completion date in mid-October 2017.

Public to be heard - none

Member FOSTER moved, second by Mayor NICHOLS, TO APPROVE WATER MAIN REPLACEMENT PROJECT ON SOUTH WIND, EAST WIND, NORTH WIND, WEST WIND AND RAINBOW TO PAMAR ENTERPRISES, DETROIT, MI. IN THE AMOUNT OF $985,947.00.

Motion carried 7-0

e. Approval of Bid Award for McKinley Park Improvements to WCI.

AEW Representative Mike Vigneron and Grant Writer Linda Davis Kirksey spoke of the land grant, phase I and phase II of McKinley Park.
Member Foster inquired where the balance of $9,000 would come from. - Ms. Kirksey spoke of the funding process.
Mr. Vigneron stated community construction could begin mid-August 2017.

Member FOSTER moved, second by Member SCHORNAK, TO APPROVE THE LAND AND WATER CONSERVATION FUND GRANT MATCH FOR MCKINLEY BARRIER FREE PARK PHASE TWO IN THE AMOUNT OF $209,000.

Member Lesich stated 11 years ago today, 7-13-2006, the Boundless Park became a city project of Fraser.
Member Hemelberg inquired to the level of the DPW's involvement. - The DPW is involved in most city projects.
Member Blanke thanked Ms. Kirksey.
Member Lesich stated Ms. Kirksey is the best thing that ever happened to Fraser.
Public to be heard: - none
Roll call vote:

Hemelberg	Yes
Lesich	Yes
Nichols	Yes

Schornak	Yes
Blanke	Yes
Carnagie	Yes
Foster	Yes

Motion carried 7-0

f. Approve Conditional Rezoning for 33540 Hayes Road.

Resident Mark Santia and Building Official Randy Warunek spoke of the approval of conditional rezoning for Mr. Santia's property.
Mr. Warunek stated the recommendation of the Planning Commission was approval.
Attorney Tomlinson stated this conditional rezoning is the change from 'RL' to 'RM'.
Member Carnagie asked what the time frame would be, - Spring 2018 construction would begin.

Member HEMELBERG moved, second by Mayor NICHOLS, TO APPROVE THE CONDITIONAL REZONING OF 33540 HAYES RD.

Motion carried 5-2
Member Blanke & Lesich vote no

g. Proposed Special Council Meeting, July 22nd, 2017 @ 8:30am.

City Manager Wayne O'Neal spoke of the need to interview a new Finance / Treasurer for the city of Fraser as well as discuss the anticipated water rates.
A special council meeting is scheduled for Monday, August 7th, 2017 @ 6pm to interview a prospective Finance / Treasurer with the tentative appointment scheduled for the August 10th, 2017 regular council meeting.

h. Approve November 2017 Ballot Language for PA 33.

Mr. Tomlinson spoke of the ballot language, wording needs to be approved so we can forward the proposal to the County Clerk.
Conversation ensued regarding ballot language.
Mr. Tomlinson read the Proposal;

The City of Fraser City Council approved a levy of two (2.0) mills levied July 1, 2017 under the provisions of Michigan Public Act 33 of 1951. Shall the City of Fraser increase this current special assessment levy under the provisions of PA 33 of 1951, for the purpose of raising money by special assessment for furnishing Department of Public Safety protection, including purchasing equipment, and for operation of both, an additional three, (3) mills to be levied upon each parcel of real property subject to assessment in an annual amount of an additional Three and 00/100 ($3.00) Dollars per One Thousand and 00/100 ($1,000.00) Dollars of taxable value which is estimated to raise approximately One Million One Hundred Forty Thousand and 00/100 ($1,140,00) Dollars when levied on December 31, 2017? Yes _____ No _____

Member LESICH moved, second by Member FOSTER, TO APPROVE NOVEMBER 2017 BALLOT LANGUAGE FOR PA-33.
Public to be heard:
Resident Suzanne Kalka spoke on topic
Resident Amy Baranski spoke on topic

Member LESICH moved, second by Member FOSTER, TO APPROVE NOVEMBER 2017 BALLOT LANGUAGE FOR PA-33 AS AMENDED.

Motion carried 7-0

i. Request Council Consider the Continuation of the Capital Improvement Plan.

DPW Director BJ VanFleteren and AEW representative Mike Vigneron spoke of the continuation of Capital Improvement Plan and the need to put a vote before the people to continue the program.
Conversation ensued, - ballot language can be approved at the August 10th, 2017 Council meeting.

Member FOSTER moved, second by Member CARNAGIE, TO DIRECT CITY MANAGER TO PREPARE BALLOT LANGUAGE FOR APPROVAL AT THE AUGUST 10TH, 2017 MEETING.

Public to be heard:
Business owner Ken Immler spoke on topic

Member FOSTER moved, second by Member CARNAGIE, TO DIRECT CITY MANAGER PREPARE BALLOT LANGUAGE TO CONTINUE THE CAPITAL IMPROVEMENT PLAN AT THE AUGUST 10TH, 2017 MEETING.
Roll Call Vote:

Member Lesich	No
Mayor Nichols	Yes
Member Schornak	Yes
Member Blanke	No
Member Carnagie	Yes
Member Foster	Yes
Member Hemelberg	Yes

Motion carried 5-2

8. Pending Items of Unfinished Business / Report of the City Administration

City Manager Wayne O'Neal thanked Council for his appointment, spoke of the road bond and PA-33 Proposal.

9. Report of Mayor and City Council / New Business

Mayor Nichols	Thanked the Lions Club, Fraser Booster Club and spoke of the FAN RUN, Saturday, July 16th, 2017.
Member Hemelberg	Congratulated Fraser First Booster Club.
Member Carnagie	Asked residents to support local associations and organizations at the city picnic.
Member Lesich	Thanked Council and all who supported McKinley Park.
Member Schornak	Baugnater Flea Market, September 10th, 2017 rain or shine.
Member Foster	Thanked Fraser First Booster Club and spoke of the Lions Club Carnival.
Member Blanke	Opposed to the Road Bond Proposal and PA-33 on the same ballot in November.

10. Executive Session Regarding City Attorney Confidential Memorandum – Sexual Harassment Complaint Against an Elected City Council Person

Member Carnagie moved, second by Member Hemelberg, TO ENTER INTO CLOSED SESSION AT 10:30PM.
Roll Call Vote

Nichols	Yes
Schornak	Yes
Blanke	Yes
Carnagie	Yes
Foster	Yes
Hemelberg	Yes
Lesich	Yes

Motion carried 7-0

Meeting reconvened at 11:11pm

Member SCHORNAK moved, second by Member BLANKE, TO REMOVE ATTORNEY-CLIENT PRIVILEGE FROM THE WRITTEN LEGAL OPINION AND REPORT OF MR. TOM FLEURY REGARDING THE INVESTIGATION INTO SEXUAL HARASSMENT ALLEGATIONS OF CITY OF FRASER EMPLOYEES.
Roll Call Vote:

Schornak	Yes
Blanke	Yes
Carnagie	Yes
Foster	No
Hemelberg	Yes
Lesich	Yes
Nichols	Yes

Motion carried 6-1

Member LESICH moved, second by Member BLANKE, TO APPROVE RESOLUTION IN FOUR PARTS:

1. MATTHEW HEMELBERG, BE AND IS HEREBY CENSURED FOR INAPPROPRIATE CONDUCT INVOLVING SEXUAL HARASSMENT OF CITY OF FRASER EMPLOYEES AS OUTLINED BY INVESTIGATOR THOMAS FLUERY IN HIS 16 PAGE REPORT.

2. THAT MATTHEW HEMELBERG IS HEREBY REQUESTED TO RESIGN HIS POSITION AS CITY COUNCILMAN OF THE CITY OF FRASER WITHIN 48 HOURS OF THE ADOPTION OF THIS RESOLUTION BY THE FRASER CITY COUNCIL.
3. THAT IF MATT HEMELBERG DOES NOT RESIGN WITH IN 48 HOURS, THE CITY MANAGER IS DIRECTED TO FORTHWITH SUBMIT A COPY OF THIS RESOLUTION, THE REPORT OF MR. FLEURY WITH EXHIBITS, AND OTHER NECESSARY SUPPORTING DOCUMENTATION TO GOVERNOR RICHARD SNYDER, WHICH REPRESENTS SUFFICIENT EVIDENCE THAT MR. HEMELBERG HAS BEEN GUILTY OF OFFICIAL MISCONDUCT AND/OR WILLFUL NEGLECT OF DUTY WARRANTING REMOVAL, AND A REQUEST THAT REMOVAL OF MR. HEMELBERG FROM THE OFFICE OF FRASER CITY COUNCILMEMBER OCCUR EXPEDITIOUSLY.
4. THAT PREVIOUS ACTIONS TAKEN BY COUNCIL WITH REGARD TO COUNCIL MEMBER INTERACTION AND CONTACT WITH CITY OF FRASER EMPLOYEES REMAIN IN FORCE PENDING FURTHER ACTION OF THE COUNCIL.

Roll Call Vote

Blanke	Yes
Carnagie	Yes
Foster	No
Lesich	Yes
Nichols	No
Schornak	No

Motion fails 3-3

Member SCHORNAK moved, second by Member BLANKE, TO APPROVE THE REMOVAL OF COUNCIL MEMBER HEMELBERG WITHIN THE CHARTER BY CITY COUNCIL:
REMOVAL BY COUNCIL. THE CHARTER, SECTION 5.2(C) PROVIDES THAT AN OFFICER IS FOUND GUILTY BY A COMPENTENT TRIBUNAL OF ANY ACT CONSTITUTING MISCONDUCT IN OFFICE UNDER THE PROVISIONS OF THE CHARTER THAT AN ELECTIVE OFFICE SHALL BE DECLARED VACANT BY THE COUNCIL. THE CHARTER PROVIDES FOR REMOVAL FOR: (1) REASONS SPECIFIED BY STATUTE FOR REMOVAL OF CITY OFFICERS BY THE GOVERNOR; (2) FOR MISCONDUCT IN OFFICE UNDER THE PROVISIONS OF THE CHARTER. THE CHARTER IN VARIOUS LOCATIONS DEFINE CERTAIN CIRCUMSTANCES THAT CONSTITUTE MISCONDUCT. SEXUAL HARASSMENT CLAIMS ARE NOT SPECIFIED WITHIN THE CHARTER. ACCORDINGLY, THE CITY WOULD HAVE TO ACT PURSUANT TO THE APPLICABLE STATE STATUTE MCLA 168.327. THE CHARTER PROVIDES FOR A HEARING WHERE NOTICE MUST BE GIVEN AT LEAST TEN DAYS IN ADVANCE. NOTICE SHALL INCLUDE A COPY OF THE CHARGES. AT THE HEARING, AN OPPORTUNITY FOR THE OFFICER IN PERSON OR BY ATTORNEY SHALL BE PROVIDED TO CROSS EXAMINE WITNESSES AND PRESENT TESTIMONY. THE MAJORITY OF THE MEMBERS OF THE COUNCIL IN OFFICE AT THE TIME, EXCLUSIVE OF ANY MEMBER WHOSE REMOVAL IS BEING CONSIDERED SHALL BE REQUIRED FOR ANY SUCH REMOVAL.

Roll Call Vote:

Carnagie	Yes
Foster	No
Lesich	Yes
Nichols	No
Schornak	Yes
Blanke	Yes

Motion carried 4-3

Member LESICH moved, second by Member BLANKE, TO APPROVE RESOLUTION IN FOUR PARTS:
1. JOSEPH NICHOLS, BE AND IS HEREBY CENSURED FOR INAPPROPRIATE CONDUCT INVOLVING SEXUAL HARASSMENT OF CITY OF FRASER EMPLOYEES AS OUTLINED BY INVESTIGATOR THOMAS FLUERY IN HIS 16 PAGE REPORT.
2. THAT JOSEPH NICHOLS, IS HEREBY REQUESTED TO RESIGN HIS POSITION AS CITY MAYOR OF THE CITY OF FRASER WITHIN 48 HOURS OF THE ADOPTION OF THIS RESOLUTION BY THE FRASER CITY COUNCIL.
3. THAT IF JOE NICHOLS DOES NOT RESIGN WITH IN 48 HOURS, THE CITY MANAGER IS DIRECTED TO FORTHWITH SUBMIT A COPY OF THIS RESOLUTION, THE REPORT OF MR. FLEURY WITH EXHIBITS, AND OTHER NECESSARY SUPPORTING DOCUMENTATION TO GOVERNOR RICHARD SNYDER, WHICH REPRESENTS SUFFICIENT EVIDENCE THAT MR. NICHOLS HAS BEEN GUILTY OF OFFICIAL MISCONDUCT AND/OR WILLFUL NEGLECT OF DUTY WARRANTING REMOVAL, AND A REQUEST THAT REMOVAL OF MR. NOCHOLS FROM THE OFFICE OF FRASER CITY MAYOR OCCUR EXPEDITIOUSLY.
4. THAT PREVIOUS ACTIONS TAKEN BY COUNCIL WITH REGARD TO COUNCIL MEMBER INTERACTION AND CONTACT WITH CITY OF FRASER EMPLOYEES REMAIN IN FORCE PENDING FURTHER ACTION OF THE COUNCIL.

Roll Call Vote

Foster	No
Lesich	Yes
Hemelberg	No
Schornak	No
Blanke	Yes
Carnagie	Yes

Motion fails 3-3

Member SCHORNAK moved, second by Member LESICH, TO APPROVE THE REMOVAL OF MAYOR NICHOLS WITHIN THE CHARTER BY CITY COUNCIL:
REMOVAL BY COUNCIL. THE CHARTER, SECTION 5.2(C) PROVIDES THAT AN OFFICER IS FOUND GUILTY BY A COMPENTENT TRIBUNAL OF ANY ACT CONSTITUTING MISCONDUCT IN OFFICE UNDER THE PROVISIONS OF THE CHARTER THAT AN ELECTIVE OFFICE SHALL BE DECLARED VACANT BY THE COUNCIL. THE CHARTER PROVIDES FOR REMOVAL FOR: (1) REASONS SPECIFIED BY STATUTE FOR REMOVAL OF CITY OFFICERS BY THE GOVERNOR; (2) FOR MISCONDUCT IN OFFICE UNDER THE PROVISIONS OF THE CHARTER. THE CHARTER IN VARIOUS LOCATIONS DEFINE CERTAIN CIRCUMSTANCES THAT CONSTITUTE MISCONDUCT. SEXUAL HARASSMENT CLAIMS ARE NOT SPECIFIED WITHIN THE CHARTER. ACCORDINGLY, THE CITY WOULD HAVE TO ACT PURSUANT TO THE APPLICABLE STATE STATUTE MCLA 168.327. THE CHARTER PROVIDES FOR A HEARING WHERE NOTICE MUST BE GIVEN AT LEAST TEN DAYS IN ADVANCE. NOTICE SHALL INCLUDE A COPY OF THE CHARGES. AT THE HEARING, AN OPPORTUNITY FOR THE OFFICER IN PERSON OR BY ATTORNEY SHALL BE PROVIDED TO CROSS EXAMINE WITNESSES AND PRESENT TESTIMONY. THE MAJORITY OF THE MEMBERS OF THE COUNCIL IN OFFICE AT THE TIME, EXCLUSIVE OF ANY MEMBER WHOSE REMOVAL IS BEING CONSIDERED SHALL BE REQUIRED FOR ANY SUCH REMOVAL.
Roll Call Vote:

Hemelberg	No
Lesich	Yes
Schornak	Yes
Blanke	Yes
Carnagie	Yes
Foster	No

Motion carried 4-2

Member FOSTER moved, second by Mayor NICHOLS, TO LIFT ALL LIMITED RESTRICTIONS WITH THE EXCEPTION OF MAYOR NICHOLS AND MEMBER HEMELBERG.
Mr. Tomlinson stated he does not see any legal issues with this.

Motion carried 6-1

Mr. Tomlinson suggested at the August 2017 meeting set a tribunal date.

Member FOSTER moved, second by Member CARNAGIE, TO DIRECT CITY MANAGER WAYNE O'NEAL TO MOVE FORWARD TO SECURE ADDITIONAL COUNCIL AND PRESENT NAME OF COUNCIL AT THE AUGUST 10TH, 2017 COUCNIL MEETING.

Motion carried 7-0

11. CITIZEN PARTICIPATION

Resident Reanna Reiner
Resident Amy Baranski
Business owner Ken Immler
Marty Prehn

12. ADJOURNMENT

Mayor NICHOLS moved, Member HEMELBERG, seconded by, TO ADJOURN THE REGULAR COUNCIL MEETING OF JULY 13TH, 2017 @ 11:43PM, JULY 13TH, 2017.

The motion carried unanimously,

Respectfully submitted,

____
Kelly Dolland, City Clerk

____
Joe Nichols, Mayor