



CITY COUNCIL

January 18, 2010

A regular meeting of the City of Petoskey City Council was held in the City Hall City Council Chambers at Petoskey, Michigan, on Monday, January 18, 2010. The meeting was called to order at 7:30 P.M.; then, after a recitation of the Pledge of Allegiance to the Flag of the United States of America, a roll call then determined that the following were

Present: H. Ted Pall, Jr., M.D., Mayor
William Atkins, City Councilmember
William Fraser, City Councilmember
Robert Johnson, City Councilmember
Ronald C. Marshall, Ph.D., City Councilmember

Absent: None

Also in attendance were City Manager Dan Ralley, City Clerk-Treasurer Alan Terry, City Planner Amy Tweeten, Acting Director of Public Safety Anthony Rice, and City Attorney James Murray, Plunkett & Cooney, P.C.

Resolution No. 18369
Approve Consent Agenda Items

Following the introduction of the consent agenda for the City Council meeting of January 18, 2010, City Councilmember Johnson moved that, seconded by City Councilmember

Marshall, adoption of the following resolution that would confirm that the minutes of the regular meeting of January 4, 2010, and special-session meeting of January 8-9, 2010, be approved as submitted; and that would confirm the City Council's acknowledgement of a report concerning all checks that had been issued since January 4 for contract and vendor claims at \$2,201,123.41, intergovernmental claims at \$46,704.91, and the January 7 payroll at \$193,854.65:

BE IT RESOLVED that the City Council does and hereby confirms that the draft minutes of the January 4, 2010, regular and January 8-9, 2010, special-session meetings be and are hereby approved as submitted; and

BE IT FURTHER RESOLVED that receipt by the City Council of the report concerning all checks that had been issued since January 4, 2010, totaling \$2,441,682.97, be and is hereby acknowledged

Said resolution was adopted by the following vote:

AYES: Atkins, Fraser, Johnson, Marshall, Pall (5)
NAYS: None (0)

Resolution No. 18370
Authorize Zamboni Purchase

mid-1960's Zamboni model at the Winter Sports Park; and that the Motor Pool Fund had allotted \$50,000 for this purchase.

The City Manager reported that the City's 2010 Annual Budget included monies within its Motor Pool Fund category for the purchase of a used ice-resurfacing machine to replace an existing

The City Manager also reported that the City staff had decided that the purchase of a new ice-resurfacing machine at a cost between \$97,000 and \$100,000 was not feasible and that a good used machine was prudent; that, in searching for a used machine, certain criteria had been used in the selection process that included that the unit would be powered by a gasoline, industrial engine, have a hydrostatic transmission, that the unit would be mounted on a four-wheel-drive chassis, that the conditioner should be in sound condition, and that the body of the unit was in good shape with little rust or damage to the panels or box; and that new parts and recent overhaul and rebuilt conditioner were desired.

The City Manager also reported that inquiries concerning the availability of used ice conditioners had been made to the following vendors: R.R. Specialties, Wisconsin, Inc., Somerset, Wisconsin (regional Zamboni sales); LSK Enterprises, Inc., (Olympia Ice Resurfacing Machines national representative); Iceman Arena Inc., (regional sales office for Olympia), Frank J. Zamboni Co., Inc., Paramount, California; and Mueller and Sons, Mt. Clements (Zamboni dealer); and that, after review of specifications on used equipment being offered, it was determined that Olympia Ice Resurfacing sites did not have any used gasoline-powered resurfacing machines available; that Frank J. Zamboni Co., Inc., located three gasoline-powered zambonis within the City's price range, at R.R. Specialties of Wisconsin, Inc., a Zamboni Regional Sales dealership in Somerset, Wisconsin; and these machines were owned by Frank J. Zamboni Co., Inc., Paramount, California, as follows:

<u>Model</u>	<u>Price</u>
Unit 3382 – 1984 Model 500 Zamboni	\$17,500
Unit 3718 – 1988 Model 500 Zamboni	\$29,500
Unit 3970 – 1989 Model 500 Zamboni	\$20,000

The City Manager also reported that, after numerous conversations regarding the condition of the three machines, along with photos, work history that included new parts installed and recent repairs, it was determined that Zamboni #3718 would best suit the needs of the City's operations; and that the City Council was being asked to authorize the purchase of a used 1988 Zamboni, Model 500 (serial #3718) Ice Resurfacing Machine from Frank J. Zamboni, Co., Inc., Paramount, CA, for a delivered price of \$29,500.

City Councilmember Fraser moved that, seconded by City Councilmember Atkins, the following resolution be approved:

BE IT RESOLVED that the City staff be and is hereby authorized to purchase a used ice-resurfacing machine from Frank J. Zamboni Co., Inc., Paramount, California, for \$29,500, and that City's current ice-resurfacing machine be retained for parts.

Said resolution was adopted by the following vote:

AYES: Atkins, Fraser, Johnson, Marshall, Pall (5)
NAYS: None (0)

Resolution No. 18371
Authorize Park and Facility Signage

The City Manager next reported that the City's 2010 Annual Budget included monies within its General Fund categories for the purchase of outdoor signage for certain parks facilities that totaled \$46,000; that, in researching suppliers, purchase of outdoor signage for certain parks and facilities, would total \$46,000; and that the City staff had set certain criteria that included overall cost, ability of the sign provider to design, build, install and maintain signage, make emergency repairs in a timely manner, and have a proven track record for sign manufacturing.

The City Manager also reported that Public Acts 167 and 168 of 1993, required that sealed, competitive bids be collected for any contract of \$20,000 or more with the exception of professional services, emergency repairs, transactions between governmental units, and services exempted by City Council.

The City Manager also reported that, based upon the above criteria, signage design, and a detailed pricing proposal dated January 2, 2010, it was the City staff's recommendation that a sole source contract be awarded to Sign and Design, Petoskey, for the design, construction and installation of 11 park-entry and -facility signs of various sizes, totaling \$40,955.91; that, in this instance, a sole source contract allowed the City to avoid expensive design fees; and would ensure that the City was able to work with a local sign provider to provide timely and cost effective maintenance of the signs.

The City Manager also reported that the City Council was being asked to approve a sole-source signage contract with Sign and Design, Petoskey, in the amount of \$40,955.91 for the design, manufacturing and installation of 11 park-entry and -facility signs.

Mayor Pall asked for public comment and the following were heard: George Ramey, Little Traverse Township, asked what materials the signs would be made from (the City Manager responded that the signs would be metal with letters applied); and Christina Rohn, Petoskey NEWS-REVIEW reporter, asked the age of the current signs (the City Manager responded that the current signs were approximately 20 years old).

City Councilmember Marshall asked if other bids had been received and the City Manager responded that the City had requested bids last year and that of the quotes received, the Sign and Design quote had been the lowest; and several City Councilmembers reported that they believed that Sign and Design had done excellent work in their dealings with the firm.

City Councilmember Johnson then moved that, seconded by City Councilmember Fraser, the following resolution be approved:

BE IT RESOLVED that the City staff be and is hereby authorized to contract with Sign and Design, Petoskey, for a sole-source contract for the design, manufacturing, and installation of 11 park-entry and -facility signs, for a total of \$40,955.91.

Said resolution was adopted by the following vote:

AYES: Atkins, Fraser, Johnson, Marshall, Pall (5)
NAYS: None (0)

Defer Video Service
Provider Ordinance

The City Manager next reported that the proposed Video Service Provider Right-of-Way Management Ordinance would preserve the City's right to control rights-of-way with regard to video service providers; that, in addition to general right-of-way protections, this ordinance would prevent the City from having to pay to relocate video service provider lines in the right-of-way; and that this same ordinance had been adopted by approximately 50 communities across the State of Michigan.

The City Manager also reported that, in 2006, the State of Michigan adopted the Uniform Video Services Local Franchise Act ("Video Act") which required municipalities to utilize the Uniform Video Service Local Franchise Agreement ("Uniform Franchise Agreement") with cable providers; and that these standardized franchise agreements do not have the right-of-way protections typically found in earlier cable franchises, such as the City's 2007 cable franchise with Charter.

The City Manager also reported that, while the Video Act precluded the insertion of right-of-way provisions into franchise agreements, it did permit municipalities to adopt such provisions under their police powers through a local ordinance; that the language in this ordinance closely paralleled protections contained in a METRO Act permit which set forth right-of-way protections applicable to phone companies; that this similarity was intentional because METRO Act permits had been adopted throughout Michigan and had been approved by the Michigan Public Service Commission (MPSC); that, additionally, by paralleling the METRO Act permit, the City would be treating similarly situated providers alike, as required by both State and Federal law, helping to insulate the City from legal challenges.

The City Manager also reported that adopting this ordinance was beneficial to the City for two primary reasons: (1) From an immediate financial standpoint, the ordinance provided that any costs associated with relocation of a provider's lines due to "street or utility work or other public projects" were the responsibility of the company, and not the City, and that relocation costs had the potential to be a significant expense; and (2) Without a right-of-way ordinance such as this applicable to the cable company, the *phone* company under Federal law may claim that it need not comply with its Metro Act permit, including requirements in such permits that it pay relocation costs, and therefore, without this ordinance the City could face claims from both cable and telephone providers that the City had relinquished control of its right-of-way, including that the City – and not the utility companies – pay to relocate cable and telephone lines in the rights-of-way due to street work.

The City Manager also reported that the City Council was being asked to review the proposed ordinance provided with January 18 agenda materials and, as provided for in City Charter provisions, defer action concerning this matter until its February 1, 2010, meeting.

The City Attorney reported that he concurred with the City's special legal counsel in this proposed ordinance.

Then, following City Charter provisions, action concerning this ordinance was deferred until the City Council's February 1, 2010, regular meeting, that would serve as a second reading for the proposed video service provider ordinance.

Defer Nuisance Ordinance
Revision Proposal

The City Manager then reported that, at its August 17, 2009, meeting, the City Council had considered revisions to Chapter 13 of the City Code of Ordinances, Nuisances; deferred further action concerning this ordinance until September 21, 2009, and subsequently pulled consideration of this matter from its September 21 agenda until a future meeting; and that the changes had been proposed to eliminate contradictory language in Chapters 13 and 23 (Vegetation), and to better define and clarify requirements of residents and code enforcement officers.

The City Manager also reported that, based on comments at the City Council's August 19 meeting, the ordinance had been further modified to clarify language of specifically enumerated nuisances such as unsecured or unsafe buildings, inoperable or unlicensed vehicles on private property, and disabled motor vehicles on public property; and that, in addition, language on parking and storage of recreational vehicles in front yards, and unscreened dumpsters had been added to the list of nuisances.

The City Manager also reported that the proposed ordinance would repeal Chapter 23, Vegetation, and Chapter 21, Traffic and Motor Vehicles, Sections 21-109 through 21-114; that a copy of the current and proposed ordinances, along with a chart comparing changes to the various sections, had been provided to the City Council; and that, given the numerous changes to the August 17 version of the ordinance, City staff recommended that this January 18 meeting be considered a first reading of the ordinance.

In response to questions from the City Council concerning dumpsters, the City Planner further reviewed unscreened dumpsters; reported that dumpster screens generally were made from a wood product; that owners of current unscreened dumpsters would be required to meet new ordinance screening provisions, but would be given ample time to do so; and that dumpster screening provisions had been included for both aesthetic reasons and to also contain dumpster overflows, which sometimes resulted from use of dumpsters by non-authorized users.

The City Attorney responded to City Council inquiries that, if a garbage company would not remove waste from a dumpster within a screened area, he believed that this was a problem that the owner would have to resolve with the garbage company; reported concerning the use of civil infractions for ordinance penalties that would consist of monetary fines; and that, as this was the first reading of this revised proposed ordinance, no action by the City Council would be necessary at this January 18 meeting.

In response to questions concerning more restrictive vehicle regulations proposed in the revised ordinance, the City Planner responded that the stricter vehicle regulations had been included stemming from the number of complaints received by the City staff concerning parked vehicles on private properties or within greenlawn and public sidewalk areas; and the Acting Director of Public Safety added that, because vehicle plates were valid for a one-year period, a non-operating vehicle might remain parked in one spot for months with current ordinance provisions making it difficult to enforce removal.

The City Council then discussed enforcement of the ordinance; pros and cons of parking vehicles in front yards during winter months; if "animals and humans" should be added to Definition #4 - Hazard or Hazardous; clarification on what defined a dismantled vehicle; additional clarification on types of personal property that would be prohibited from storage beyond 24 hours in front yards; and thanked the City staff for its time and efforts in assembling this revised proposed nuisance ordinance.

Mayor Pall then asked for public comment and the following were heard:

Dean Fleury, 108 Michigan Street, reported that he believed that provisions prohibiting vehicles from parking in front-yards should remain enforced even during winter months because he believed that parked vehicles commonly damaged and muddied lawns that resulted in no grass growth during summer months; and asked if front porches were included in front-yard provisions for storage of items beyond 24-hours, such as a non-working freezer (the City Attorney responded that the ordinance provisions were drafted to address nuisances that he believed were common to the general public's interest).

Thomas Postelnick, 1055 Hoffman Street, reported that he believed that, if the City Council believed that Department of Public Safety staff should enforce such an ordinance, he believed that the City Council should defer such ordinance until input can be sought from the new Director of Public Safety.

B. Jeremy Wills, D.D.S., 204 State Street, reported that, because his home and business was located on a corner lot and could be seen on three sides from the street, he believed that his property was under total scrutiny from all four sides.

Alan Kalchik, 1011 Curtis Avenue, asked for clarification of personal property that would be under the definition of sport and entertainment; and that he believed that smaller lots might necessitate placement of such items in front yard areas which would be prohibited under the proposed ordinance.

Hear Comments

Mr. Fleury reported that he appreciated that copies of the complete agenda packets were being made available to the public at City Council meetings and suggested that they be copied double-sided to save paper.

Mayor Pall reported that the public was invited to attend a 7:00 P.M., Thursday, January 21, Planning Commission meeting that would review construction documents for the Bear River Valley Recreation Area improvement project.

There being no further business to come before the City Council, the meeting was adjourned at 8:32 P.M.

H. Ted Pall, Jr., M.D., Mayor

Alan Terry, City Clerk-Treasurer