

May 18, 2009

Regular meeting of the Ludington City Council held in the Council Chambers of the Municipal Building on Monday, May 18, 2009, at 6:30 o'clock p.m.

Present: His Honor Mayor John Henderson and Councilors Kaye Holman, Greg Dykstra, Brent Scott, Dave Weston, Pete Engblade, and Gary Castonia.

Absent: Councilor Peterson who was excused.

Also present were City Manager John Shay, City Attorney Roger Anderson, Police Chief Mark Barnett, and City Clerk Deborah Lusk.

Invocation was pronounced by Councilor Pete Engblade.

Pledge to the Flag was given.

Moved by Councilor Engblade, seconded by Councilor Castonia, that the Agenda be approved as presented. Motion Carried.

The meeting was opened for public comments.

Tom Tyron, 305 E. Ludington Ave., thanked the City for its participation in the petunia parade and stated that the work the City does is very essential to the continuation of this project. He also explained that at one point the City dedicated a lot of money to fixing the streets and he believes that if the City disregarded street repair for the next three years so that the Washington Avenue Bridge could be replaced, there could be a lot of trouble over time to the major and local streets.

After no further comments were received, the regular order of business was resumed.

Moved by Councilor Holman, seconded by Councilor Scott, to approve the minutes of the regular meeting 5/04/09. Motion Carried.

Moved by Councilor Engblade, seconded by Councilor Dykstra, that the request from the American Association of University Women to post signs at designated locations to advertise for the 20th Annual Antique Show at the Mason County Fairgrounds on Sunday, July 12, 2009, be approved. Councilor Holman went on record expressing that she will specifically vote no on placing the signs in the City's right of way even though she supports the AAUW. Councilor Holman opposed. Motion Carried.

Julie VanDyke, Mason County Growth Alliance, provided an update and was available to answer questions. The March 2009 Quarterly Newsletter was reviewed and it was explained that the next edition will be coming out in early June. The Mason County Collaborative Group which includes the Community Development Director Heather Loney, the Chamber, CVB, Scottville's Main Street Program, United Way, and the Art Center, meets monthly to communicate ideas and not duplicate events. The Growth Alliance, the Chamber, and the CVB are all under one roof now and are undergoing a Value Stream Mapping process to eliminate duplication and streamline efforts. This is sponsored through Metalworks and they have allowed the use of their Quality Control employees to lead them in this process. With the Hospital Foundation, there will be a Business Leader's breakfast on June 30th to discuss the positive business that is happening in Mason County. In the area of retention efforts, Bill Kratz, the MEDC representative, the Mason County Growth Alliance, Paul Griffith of Michigan Works, John Shay, City Manager, and Jamie Healy, SBTC, work together to make the retention visits. They are working on current tax abatements with Michigan Food Processors and the Brill Company. Mason County Growth Alliance sees the request for proposals through the MEDC, and there is a 29 page proposal with a perfect fit for the Harbison Walker site and they should know about that by the end of June. There is a need to work on building an entrepreneur support system. Business Start Up classes were held and several new businesses were initiated as a result of these classes. One of the new businesses, Tease Please, and Popcorn, began a new business which will sell popcorn on the Badger this summer. A Small Business Roundtable will begin in the fall 2009 with biweekly informal meetings to have peer to peer networking.

The Growth Alliance is working on a grant with Manistee to establish an entrepreneur system and are waiting for a recommendation on how to work with entrepreneurs. There is a marketing class at West Shore Community College where students worked with Captain Chuck's, Instrumental Music, the Grand, State Farm Insurance of Scottville, and downtown Manistee, and as a result of this work a marketing research manual was prepared and distributed. Through the regional effort the Mason County Growth Alliance is working with Manistee on how better to partner more effectively and share economic resources. Finally, the Mason County Manufacturers' Association meets

monthly and is working well together. His Honor Mayor Henderson stated that Julie is working diligently to attract new business to this area and expressed appreciation to her for the help she has given to the City. As a final note, Julie VanDyke expressed support for the Blu Moon Group LLC in their efforts to acquire a liquor license.

Moved by Councilor Holman, seconded by Councilor Castonia, that the Finance Report with total expenditures in the amount of \$404,246.30 for this period be approved and orders drawn according to the City Charter. Motion Carried.

Ordinance No. 195-09, an Ordinance to enter into an Agreement for Professional Assessor Services, was presented for the first reading. City Manager John Shay presented the proposal for the Assessing Contract and introduced Chuck Zemla to the Council, to perform the assessing services between now and March 31, 2010. He will be here at City Hall two days a week to meet with taxpayers, go over the files, reappraise properties in the field, and then for the other three days is available by phone or email to answer taxpayer questions, attend board of review meetings, represent the City in small claims hearings and full tax tribunal hearings. He will reappraise 20% of the City's properties. The contract will be for \$41,677. Because this term goes over two fiscal years, it must go through an ordinance. There are some pending small claims cases that are coming up and with the Council's approval, City Manager Shay will hire Mr. Zemla through the end of June through his authority and then the Council would approve the ordinance for the remaining term covering the two fiscal years.

Ordinance No. 195-09 shall be presented for adoption on 6/8/09 and is available for public inspection in the City Clerk's Office during regular business hours.

Chuck Zemla was present and introduced himself to Council. He explained that he has a small company with 4 other assessors. He assured the Council that this type of service has been done successfully in other municipalities and his company is very consumer oriented and feels that residents and taxpayers are customers. He has been doing this since 1997. Councilor Dykstra asked if 16 hours per week was reasonable for this type of service. Mr. Zemla explained that his company performs the assessing services for the City of Greenville, which is similar in size, and his company is available only 4 hours a week. Chuck Zemla is a level 3 assessor and not a licensed appraiser.

Moved by Councilor Scott, seconded by Councilor Castonia, to approve the proposed revisions to the Residency Policy. Councilor Scott presented the revised Residency Policy which reads that "All City employees are required to establish or maintain residency within the City of Ludington or within a twenty (20) mile radius of the nearest City boundary within six (6) months of hire. Those employees who are currently in compliance with this residency policy, are expected to maintain that status during their tenure with the City. Any employee may request a waiver from this residency requirement by submitting a written request to the City Manager. The City Manager shall then present the written waiver request to the Personnel Committee for resolution. The City shall take into account the following criteria when considering a request for a waiver from the residency requirements, including but not limited to

- The nature of the employee's job duties relative to the anticipated need for rapid response in particular circumstances.
- The length of travel time anticipated based on the waiver request, especially in inclement weather.
- Unusual circumstances leading to the need for the employee to request a waiver.
- Those employees covered by union contract or an individual employment contract should consult those documents for applicable residency requirements."

Councilor Dykstra asked what prompted this policy revision. City Manager Shay explained as it stands now employees do not have to live in the City, they can live within a twenty mile radius of the City. Questions have been raised as to the ability of proving the residency of employees and enforcing the policy so the City consulted with the labor attorney to resolve some of these questions. It was his recommendation that there may be instances that are in the City's best interest that the City considers a waiver from the 20 mile radius. Councilor Holman and Councilor Dykstra opposed this motion to revise the residency policy. Motion Carried.

Councilor Scott explained that there was a resignation in the Police Department and he asked Council and City Manager John Shay to consider the hard decisions on what the future may hold for them, how the City will budget and pay for things in the future. He is asking for a workshop and is asking each councilor to come up with a list of ideas and the workshop should include department heads and anyone willing to attend. Prior to the workshop, the Finance Committee will review these ideas. It was decided to allow Council 30 days to collect ideas and then meet in late July or early August. The decision to hire a new police officer was put on hold based on some of the economic considerations. Councilor Castonia explained that he is totally against not replacing the officer and short changing the City of law enforcement and Councilor Holman agrees.

A public hearing was set for June 8, 2009, to hear comments on the alley abandonment and vacation of Block 1, Assessors Plat of Sixth Addition.

RESOLUTION ESTABLISHING THE DOWNTOWN DEVELOPMENT AUTHORITY DISTRICT AS A REDEVELOPMENT PROJECT AREA

WHEREAS, the City of Ludington has established a Downtown Development Authority (DDA) Downtown District under 1975 Public Act 197, MCL 125.1651 to as 125.1881, and

WHEREAS, the State of Michigan allows on-premises liquor licenses under certain conditions as defined in Public Act 501 of 2006, Section 521a(1) of the Michigan Liquor Control Code of 1998, MCL 436.1521a(1)(b), and

WHEREAS, one of the conditions of the aforementioned Act is that the DDA Downtown District be established as a "Redevelopment Project Area" as defined by the Act.

NOW THEREFORE, BE IT RESOLVED, that the City of Ludington City Council hereby establishes the Ludington Downtown Development Authority Downtown District as a "Redevelopment Project Area," as defined under Public Act 501 of 2006, Section 521a(1) of the Michigan Liquor Control Code of 1998, MCL 436.521a(1)(b), and

BE IT FURTHER RESOLVED, that the City of Ludington City Council hereby certifies that the Ludington Downtown Development Authority Downtown District was established under 1975 Public Act 197, MCL 125.1651 to 125.1881.

Moved by Councilor Castonia, seconded by Councilor Scott, that the above Resolution be adopted. The resolution referred to City Commission and this needs to be corrected to refer to City Council. Moved by Councilor Castonia, seconded by Councilor Scott, to correct the Resolution to read City Council, rather than City Commission. Motion Carried. The original motion was then back on the floor to establish the Downtown Development Authority District as a Redevelopment Project Area with the corrections referring to Council rather than Commission. Community Development Director, Heather Loney, explained that Public Act 501 of 2006 allowed the Liquor Control Commission to issue new on-premise liquor licenses to local units of governments. Businesses qualify if they are located in the Development Districts or Redevelopment Project Areas when they apply for these licenses, the business must be engaged in dining, recreation, or entertainment and must be open to the general public with a seating capacity of over 50 people and demonstrate that they can purchase the license. The business must show \$75,000 of improvement in their building over the period of the five preceding years, or commit to invest \$75,000 in the building before the license is issued. The total investment in the DDA area must equal or exceed \$200,000 for the preceding five years. Over the preceding three years, with the construction of One Ludington Place, the investment exceeded over \$11 million. Motion Carried.

RESOLUTION APPROVING THE APPLICATION FOR A CLASS C LIQUOR LICENSE FOR BLU MOON GROUP LLC

WHEREAS, the Blu Moon Group L.L.C. has made application for a new Class C License issued under MCL 436.1521a(1)(b), located at 125 S. James Street, City of Ludington, Mason County, Michigan.

WHEREAS, the State of Michigan Liquor Control Commission requires that the City of Ludington support the application by the Blu Moon Group L.L.C. above all others in obtaining this new Redevelopment Liquor License under MCL 436.1521a(1)(b).

WHEREAS, the City of Ludington certifies that the Blu Moon Group L.L.C., located at 125 S James Street is located within the Ludington Downtown Development Authority Downtown District.

NOW THEREFORE BE IT RESOLVED, that the City of Ludington supports the Redevelopment Liquor License Application fro the Blu Moon Group L.L.C. above all others and certifies that said establishment is within the Ludington Downtown Development Authority District.

Moved by Councilor Castonia, seconded by Councilor Dykstra, that the above noted Resolution be adopted. Councilor Scott commented that the family who owns the Blu Moon Café is very friendly and suggested that all council members meet them. Councilor Holman asked whether this liquor license is different from the licenses Council has approved in the past. Police Chief Mark Barnett explained that this is a resolution to approve the application for a liquor license and that the actual background check will come at a later date. Motion Carried.

RESOLUTION IN SUPPROT OF USING LOCAL BRIDGE PROGRAM FUNDS TO REPLACE THE SOUTH WASHINGTON AVENUE BRIDGE

WHEREAS, the City of Ludington retained Scott Civil Engineering Company to inspect the South Washington Avenue bridge; and

WHEREAS, Scott Civil Engineering Company inspected the bridge on April 18, 2009; and

WHEREAS, the inspection report revealed that the bridge is in terrible condition and the box beams on the South Washington Avenue Bridge are in serious condition and are continuing to deteriorate due to the fact that there were multiple areas where pre-stressing strands were exposed and broken. The exposed strands that were not broken will continue to deteriorate rapidly; and

WHEREAS, Scott Civil Engineering Company is recommending that the City of Ludington strongly consider replacing the superstructure in the near future; and

WHEREAS, the estimated cost to replace the bridge and approaches are \$2,494,343, which includes both construction and engineering costs; and

WHEREAS, the City of Ludington has prepared an application to obtain funds in fiscal year 2012 from the Local Bridge Program to pay for a maximum of 95% of the construction costs to replace the South Washington Avenue Bridge. Thus, the City's match would be approximately \$381,567 (\$111,199 construction costs + \$270,368 engineering costs).

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Ludington hereby supports the City of Ludington's application to replace the South Washington Avenue Bridge in fiscal year 2012 with funds from the Local Bridge Program.

Moved by Councilor Castonia, seconded by Councilor Scott, that the above Resolution be adopted. Councilor Castonia explained that this resolution is simply applying for the grant, not committing the City to anything. His Honor Mayor Henderson also explained that the City is also looking for other alternative travel routes. Councilor Dykstra explained that if we apply and receive a grant, and we turn down the grant, we will never get a grant for this type of work again. He does not believe this is good City business. Councilor Engblade asked if this is going to be the same height as the existing bridge and if so, would this cost more. City Manager Shay explained that this application will raise the bridge by 2 feet, so there will be construction cost estimate for the approach work which will cost about \$170,000. If we kept the bridge at the same height the approach cost would go away. The grant will pay 95% of the approach and none of the engineering costs. Councilor Engblade then asked what the estimated remaining life is. City Manager Shay explained that the estimated life was not made known other than the bridge was deteriorating each year. Councilor Engblade asked if the City would have a game plan to handle the remaining roads over the time it takes to save for this bridge work. City Manager Shay explained that there was money left to do hot patches on roads and to apply for small urban funding to do a major road such as Staffon Street. The State is currently looking at a different way to fund road projects and the projections do not take this into consideration. In short, hot patches will be done on the worst roads, and if there would be a water or sewer project where the road needs to be taken out and replaced this would be handled through the small urban project. Councilor Dykstra asked if we should make our decision as to whether there is enough need to retain the bridge, or what is the downside to not having a bridge, before the City makes a commitment to apply for grant funding. City Manager Shay explained that in the last traffic count in 2006 there were 6,000 cars a day travelling the bridge. Councilor Holman stated that the City's share would be \$381,000 and this is \$66,000 higher than last year. It was explained that the new estimate is based on an inflationary factor through 2012. Councilor Castonia explained that if we do not apply and take this grant where will the City be on the list in the future. MDOT stated that last year we were eligible for the work and the State ran out of money, but the City has a very good chance of funding for 2012. If the City does not apply for it at this point there was no assurance as to whether we would be on the list for 2013. Councilor Holman also stated that Shawn McDonald was going to contact MDOT to see if the road between Madison Street and Washington Avenue could be considered a seasonal road with weight restrictions, but there has been no word yet. City Manager Shay explained that there is concern if the force main on Dowland Street, Washington Avenue, and Madison Street could support the bridge traffic. Councilor Dykstra asked if we have done adequate soul searching to determine community input for this bridge. Councilor Engblade explained that he was against the application for the grant in the past and then he determined that there was no proper maintenance that has been done on the bridge, so the bridge does have to be replaced unless it is to be eliminated. He believes the bridge is an asset and if the City were to go along with the grant, the City must develop a maintenance policy. He believes he should go along with the application and try the hot patches on the roads for a couple of years. Councilor Dykstra explained that this bridge has met its life expectancy, but is asking if the need is there for a bridge, before we spend the money for a new bridge. Councilor Holman expressed here unhappiness with all of the questions on this bridge before coming down to a decision by June 1. Councilor Scott explained that the last time we applied for the grant the cost for the bridge was lower, and the bridge was rated for 28 tons last year, and we are down to 20 tons this year. Firemen Fred Hackert, 1025 Vogel St., introduced himself and explained that the aerial fire trucks were no where near the 20 tons, but commercial trucks would be an issue. Councilor Castonia commented that he is in favor of applying for the grant, and if the City does not get the grant, the City will spend a lot more than \$381,000 in fixing Dowland Street, Washington Avenue and Madison Street to handle the additional traffic that comes from the bridge. His Honor Mayor Henderson reiterated that the bridge is safe. Councilor Dykstra stated that he would like to see public input on this bridge. Motion Carried.

Councilor Castonia presented the April Monthly Police Activity Report.

ORDINANCE NO. 194-09

An Ordinance to amend Sections 10-137 and 38-106 of the City Code

THE CITY OF LUDINGTON ORDAINS:

Section 1: Section 10-137 of the City Code shall be amended to read as follows:

Sec. 10-137. Restricted Area

Except as specifically permitted in this section, no canvasser, solicitor, peddler, or transient merchant required to be registered under this chapter shall operate within the areas and during the times indicated as follows:

1. Within that certain business district of the city, defined to include Ludington Avenue between Lewis Street and Rowe Street, James Street between Court Street and Dowland Street, except that the city may allow a farmers' market in the plaza area of the north 100 block of James Street to be operated in accordance with rules and regulations to be established by the city manager, or except as part of the Freedom Festival or other special event approved by the city council as provided in subsection (6) below. The city council may also authorize persons providing recreational or entertainment activities to the public to conduct such activities in the 100 block of North James Street, subject to such conditions as the city council or city manager may reasonably impose.
2. Within the confines of Stearns Park, such park lying west of Lakeshore Drive between Tinkham Avenue and the channel of Pere Marquette Lake, except that this shall not prevent the city from entering into agreements for concessions in the park, or except as part of a special event approved by the city council as provided in subsection (6) below. The city council may authorize persons to provide recreational or entertainment activities to the public in Stearns Park, where such activities are consistent with park uses, subject to such conditions as the city council or city manager may reasonable impose.
3. At any time within that certain area bounded on the north by West Pere Marquette Street, on the east by North William Street, on the south by West Loomis Street and on the west by North Ferry Street during any period in which an arts or crafts fair, show or exhibition, approved by the city, is held, unless authorized by the sponsor of such event to participate in an arts or crafts fair, show or exhibit.
4. At any time within that certain area bounded on the north by Lowell Street, on the south by the Pere Marquette channel, on the west by Lake Michigan and on the east by the north-south alley between Gaylord Street and Lewis Street, during the Gus Macker Tournament, unless authorized by the sponsor of such event.
5. At any time within the areas described in subsections a. through c. below during the Freedom Festival (the festival held during the week of the Fourth of July), except where such canvasser, solicitor, peddler, or transient merchant has been approved and authorized by the sponsor of the Freedom Festival within this restricted area and has written proof of such authorization and approval in his/her possession while operating in such restricted area. The restricted areas are as follows:
 - a. Within that certain area bounded on the north by Court Street, on the south by Loomis Street, on the east by Madison Street, and on the west by Lake Michigan.
 - b. Peter Copeyon Park, such park being west of Washington Avenue on Pere Marquette Lake, bounded on the north by a line approximately 80 feet south of the westerly extension on the center of Second Street and on the south by a line approximately 150 feet south of the westerly extension of Fourth Street.
 - c. Waterfront Park, such park being bounded on the east by the southerly extension of the west line of Robert Street, on the west by Pere Marquette Lake, on the north by Filer Street and on the south by Harbor View Marina.
6. In the event that the city council shall approve a special event in any of the restricted areas designated above, the sponsor of such event may allow canvassers, solicitors, peddlers or transient merchants to operate as part of such event, within the restricted area during such special event, provided such persons or entities shall have written proof of such authorization and approval in his/her possession while operating in such restricted area. (Code 1984, Sec. 7.16; Ord. No. 77-93, Sec. 1, 5-27-2003; Ord. No. 149-06, Sec. 1, 5-8-2006)

Section 2: Section 38-106 of the City Code shall be amended to read as follows:

Sec. 38-106. Required.

In addition to any other section of this article requiring a permit prior to engaging in a given activity, no person in a park shall conduct, operate, manage or take part in any of the following activities unless a permit is obtained prior to the start of the activity:

1. Any picnic, outing or gathering sponsored by any person and composed of 30 or more persons.
2. Any contest, performance, play, motion picture, fair, musical event or similar event, except events organized by the recreation department.
3. Any public meeting, assembly or parade.
4. Any use of any park facility by a person or group of persons to the exclusion of others.
5. Providing recreational or entertainment activities, other than as part of any use described in subsections (1) through (4) above for which a permit is given, whether or not for a fee. No such activities shall be permitted unless they are consistent with park uses, and provided that any such use is approved by the City Council. (Code 1984, Sec. 3.13)

Section 3: Severability: Should any provisions of this Ordinance or any part thereof be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions hereof or of any other provisions of the Code or Ordinances of the City of Ludington.

Section 4: Effective Date: This Ordinance shall be effective 20 days after publication.

Moved by Councilor Dykstra, seconded by Councilor Holman, to adopt Ordinance No. 194-09, an ordinance to amend Sections 10-137 and Section 38-106 of the City Code to allow recreational entertainment in North James St and Stearns Park upon the approval of the City Manager or City Council. City Manager Shay provided a summary of this ordinance and explained that the City received a request from Chris Turnball to operate a rock climbing wall in Stearns

Park, and the parking lot immediately west of North James Street., This comes under the vendor solicitation part of the code and so this ordinance will amend the current vendor solicitation ordinance.

Roll Call: Ayes: Councilors Dykstra, Scott, Weston, Holman, Castonia, and Engblade.

Nays: None.

Absent: Councilor Peterson. Motion Carried.

Moved by Councilor Dykstra, seconded by Councilor Holman, to approve Chris Turnball of J C & Company, LLC to put a mobile rock climbing wall in North James Street Plaza and Stearns Park from the Memorial Weekend until Labor Day weekend. Motion Carried.

His Honor Mayor Henderson went to an open house at Sandcastles and expressed appreciation on a fantastic place and encouraged all to check it out. He congratulated them on their hard work. He publicly thanked all who planted the petunias last Saturday and expressed appreciation to all who came out for this event.

Councilor Castonia asked for a report on how the carriage rides did last year and City Manager Shay stated that he will get a report for the June 8th meeting.

His Honor Mayor Henderson explained that on Friday the Badger will be sent off on the first voyage of this year at 7:30 a.m. Everyone will meet at the fire station, parade to the carferry dock, and will provide a proper send off.

Moved by Councilor Engblade, seconded by Councilor Holman , that the meeting be adjourned. So carried at 7:45 p.m.

Deborah L. Luskin, CMC
City Clerk