

November 8, 2010

Regular meeting of the Ludington City Council held in the Council Chambers of the Municipal Building on Monday, November 8, 2010, at 6:30 o'clock p.m.

Present: His Honor Mayor John Henderson and Councilors Kaye Holman, Paul Peterson, Wally Taranko, Brent Scott, Wanda Marrison, Pete Enghlade, and Gary Castonia.

Absent: None.

Also present were City Manager John Shay, City Attorney Richard Wilson, Police Chief Mark Barnett, Interim City Treasurer Linda Rogers, and City Clerk Deborah Luskin.

Invocation was pronounced by Councilor Enghlade.

Pledge to the Flag was given.

Moved by Councilor Holman, seconded by Councilor Peterson, that the Agenda be approved as presented. Motion Carried.

The meeting was opened for public comments.

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

Moved by Councilor Scott, seconded by Councilor Enghlade, to approve the minutes of the regular meeting 10/25/10. Motion Carried.

Moved by Councilor Castonia, seconded by Councilor Holman, that the Ludington Scottville Chamber of Commerce request to hold the annual Holiday Parade "Aglow on the Avenue" on December 3, 2010 be approved. Motion Carried.

Moved by Councilor Holman, seconded by Councilor Peterson, that the Finance Report with total expenditures in the amount of \$362,326.49 for this period be approved and orders drawn according to the City Charter. Motion Carried.

Moved by Councilor Holman, seconded by Councilor Marrison, to confirm the City's FOIA Coordinator's decision to charge a deposit to Mr. Rotta related to his FOIA requests dated October 18, 2010 and October 25, 2010. City Attorney Richard Wilson explained that City Manager John Shay had supplied Tom Rotta with a response to each of the requests indicating that part of each request was granted in part and denied in part. The basis for denial was that a public record was not available under the name given or by any other name reasonably known by the FOIA Coordinator. City Attorney Wilson explained that it is appropriate when there is an ambiguous request to grant it with respect to every document that may exist or deny it in total. Looking through large volumes of records is expensive and time consuming and a charge is appropriate based on the hourly rate of the least expensive person who is capable of searching the records and segregating and determining which records will fulfill the request. The cost for the first request was \$230 and the second request was \$140 and Mr. Rotta was notified that he would be responsible to pay one half of these costs. The basis of Mr. Rotta's appeal is the fact that he does not want to pay for these documents and he does not like the fact that the City did not specify in the City's response the unusual nature of the cost that the City incurred. The FOIA statute states that if a request is denied the person has an opportunity to appeal to the governing body or to Circuit Court. It is the City Attorney's opinion that the response to the FOIA requests was handled appropriately and he sees no basis in which to substantiate or uphold the appeal. He then provided City Council with three options, to either uphold the decision of the FOIA Coordinator, reverse the decision of the FOIA Coordinator, or to uphold the decision in part and reverse the decision in part. Councilor Enghlade commented that there is an excerpt in the Ludington FOIA ordinance which says that simple searches are not charged and he asked what constitutes a simple search. City Attorney Wilson stated that a simple search is a record which is a clearly identified document. Councilor Enghlade then stated that the City normally does not charge for a simple search as everyone should have the opportunity to obtain a record, however, when the request becomes so broad that you cannot determine what the request is then a charge is appropriate. Councilor Scott noted that Mr. Rotta or his attorney has sent 27 requests for information under FOIA and this is a lot of requests and very time consuming. Motion Carried.

ORDINANCE NO. 219-10

An Ordinance to Amend Chapter 62, Article V, Division 3, of the Ludington City Code to Clarify Responsibility for Costs and Expenses of Maintenance of Building Sewers and to Repeal all Ordinances in Conflict Herewith.

The City of Ludington Ordains:

Section 1. Chapter 62, Article V, Division 3, Section 62-367 of the Ludington City Code is hereby amended to read in its entirety as follows:

Sec. 62-367. Installation and maintenance costs.

All costs and expenses incident to the installation, connection, repair and maintenance of the building sewer shall be borne by the owner. The owner shall indemnify the city from loss or damage that may directly or indirectly be occasioned by the installation, connection, repair or maintenance of the building sewer.

Section 2. All ordinances or parts of ordinances in conflict with the provisions of this section are hereby repealed.

Section 3. This ordinance shall become effective 20 days after its adoption and publication as required by the City Charter.

Moved by Councilor Peterson, seconded by Councilor Castonia, that Ordinance No. 219-10 be adopted.

Roll Call: Ayes: Councilors Scott, Marrison, Holman, Peterson, Castonia, Engblade, and Taranko.

Nays: None. Motion Carried.

ORDINANCE NO. 220-10

An Ordinance to Amend Chapter 62, Article IV, Division 1, of the Ludington City Code to Regulate Cross Connections with the Public Water Supply of the City and to Repeal all Ordinances in Conflict Herewith.

The City of Ludington Ordains:

Section 1. Chapter 62, Article IV, Division 1, Section 62-233 of the Ludington City Code is hereby amended to read in its entirety as follows:

Section 62-233. Cross Connections

(a). The City adopts by reference the Water Supply Cross Connection Rules of the Michigan Department of Natural Resources & Environment being R11401 to R11047 of the Michigan Administrative Code.

(b) It shall be the duty of the City to cause inspections to be made of all properties served by the public water supply where cross connections with the public water supply is deemed possible. The frequency of inspections and re-inspections based on potential health hazards involved shall be as established by the City and as approved by the Michigan Department of Natural Resources & Environment.

(c) Representatives of the City shall have the right to enter at any reasonable time any property served by a connection to the public water supply system of the City for the purpose of inspecting the piping system or systems thereof for cross connections. On request, the owner, lessees, or occupants of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross connections.

(d) The City is hereby authorized and directed to discontinue water service after reasonable notice to any property wherein any connection in violation of this ordinance exists and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until the cross connection(s) has been eliminated in compliance with the provisions of this section.

(e) All testable backflow prevention assemblies shall be tested initially upon installation to be sure that the assembly is working properly. Subsequent testing of assemblies shall be on an annual basis as required by the City and in accordance with Michigan Department of Natural Resources & Environment requirements. Only individuals that are approved and State of Michigan certified shall be qualified to perform such testing and such individual(s) shall certify the results of his/her testing.

(f) The potable water supply made available on the properties served by the public water supply shall be protected from possible contamination as specified by this section and by the state plumbing code. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as.

WATER UNSAFE
FOR DRINKING

(g) This section does not supersede the state plumbing code but is supplementary to it.

(h) Any person or customer found guilty of violating any of the provisions of this section or any written order of the City Manager or his designee, in pursuance thereof, shall be deemed guilty of a violation of this Code, punishable as prescribed in section 1-7, for each violation. Each day upon which a violation of the provisions of this section shall occur shall be deemed a separate and additional violation for the purpose of this section.

Section 2. All ordinances or parts of ordinances in conflict with the provisions of this section are hereby repealed.

Section 3. This ordinance shall become effective 20 days after its adoption and publication as required by the City Charter.

Moved by Councilor Peterson, seconded by Councilor Taranko, that Ordinance No. 220-10 be adopted. Councilor Engblade questioned if this includes the underground connections or just the connections that run into a residence. City Manager Shay explained that it would just be for above ground connections, the point where the water enters a building and the piping system is followed to be sure there is no area where there could be negative water pressure that would cause bad water to get into public water supply. Councilor Scott questioned whether they look at sprinkler systems. City Manager Shay explained that they look at outdoor silcocks where you plug the hose into, but they will look at high priority accounts such as industrial and commercial which will be inspected once a year and residential will be considered much less of a hazard and will be inspected once every five years.

Roll Call: Ayes: Councilors Peterson, Engblade Taranko, Marrison, Castonia, Scott, and Holman.

Nays: None. Motion Carried.

Ordinance No. 221-10, an ordinance to enter into a 3 Year Agreement for software for Cartier Park campground reservation system, was presented for the first reading.

Ordinance No. 221-10 shall be presented for adoption on 11/22/10 and is available for public inspection in the City Clerk's office during regular business hours.

His Honor Mayor Henderson shared with Council that in the November 2010 Lighthouse Digest there is a story of the Ludington Lighthouse, the 44, and the Coast Guard Station written by Pat and Jerry Biggs.

Councilor Engblade reminded all that Julie Chappel is retiring from the Police Department and the open house will be Friday, November 12th from 2:00 - 4:00 p.m.

Moved by Councilor Engblade, seconded by Councilor Holman, that the meeting be adjourned. So carried at 6:55 p.m.

Deborah L. Luskin, CMC
City Clerk