

REGULAR MEETING OF THE DEARBORN HEIGHTS CITY COUNCIL

APRIL 22, 2003

03-147 The meeting was called to order at 8:07 p.m. by Council Chair Elizabeth J. Agius.

Roll Call showed the following:

Present: Council Chair Elizabeth J. Agius, Councilman Kenneth R. Baron, Councilwoman Janet S. Badalow, Councilwoman Janet L. Blackburn, Councilman Bob Constan, Councilwoman Margaret M. Van Houten.
Absent: None.
Also Present: Mayor Canfield, Executive Assistant Horvath, Corporation Counsel Miotke, City Clerk Robbins, Treasurer Riley, Comptroller Barrow, Assessor Riedel, Police Captain Gavin, Deputy Fire Chief McElroy, Recreation Director Grybel, Public Service Administrator Blackburn, Community Development Director Oliverio, Human Resource Specialist Remily.

The Pledge of Allegiance was led by Treasurer Riley.

03-148 Motion by Councilwoman Van Houten, seconded by Councilwoman Blackburn, that the Agenda for the Regular Meeting of April 22, 2003, be approved with the removal of 8-A (St. Albert the Great Parade) and the addition of 13-B (Moroz-Pietrowski Buddy Poppy Sale) 13-C (Decertification of Basic Cable Rates Regulations) and 13-D (Metropolitan Extension Telecommunications Right-of-Way Oversight Act 2002 Proposed Resolution for Compliance and Fee Participation).

Motion adopted.

03-149 Motion by Councilman Baron, seconded by Councilman Constan, that the Minutes from the Regular Meeting of April 8, 2003, be approved as submitted.

Motion adopted.

03-150 Motion by Councilman Baron, seconded by Councilman Constan, that Current Claims 6-1 through 6-14, be approved as submitted.

1. ACCUMED BILLING, INC. - Ambulance Services March 2003 - Inv. dated 04/10/03 from A/C 101-000-626-000 (Ambulance) \$4,015.01. General Govt.
2. CENTRAL WAYNE COUNTY SANITATION AUTHORITY - Monthly Debt and Services April/March - Inv. dated 04/03/03 from A/C 101-200-810-000 (Sanitation) \$164,443.88. General Govt.
3. DSS CORPORATION - Prepaid Maintenance Agreement Recorder - Inv. 24029 dated 04/01/03 from A/C 101-300-818-000 (Contract Services) \$3,300.00. Police Dept.
4. FANNING/HOWEY ASSOCIATES - Schematic Design New Libraries - Inv. 1090815, 1090804, 1090814, 1090803 from A/C 738-738-807-000 (Misc. Expense) \$132,221.07. Library Fund.
5. NAGEL CONSTRUCTION - Sewer Cleaning Program - Inv. 1770 dated 04/10/03 and 1766 dated 04/09/03 from A/C 592-540-818-030 (Contract Services) \$33,090.29. Water Dept.
6. OAKLAND COUNTY CLEMIS - CLEMIS Usage Fee & MDC Participation Fee - Inv. 303072 and 303071 from A/C 101-300-818-000 (Contract Services) \$8,473.00. Police Dept.
7. OSCAR W LARSON - Misc. Pump Repairs - Inv. 105549 dated 03/31/03 from A/C 592-536-931-000 (Repairs) \$2,385.62. ENC. Water Dept.
8. QUAD-TRAN OF MICHIGAN - Data Processing April 2003 - Inv. 4077 dated 03/31/03 from A/C 101-130-818-000 (Contract Services) \$3,600.00 and A/C 101-130-728-000 (Supplies) \$825.75. District Court.
9. R & R FIRE TRUCK REPAIR - Repair DHE-3 1996 Pierce, DHR-3 International - Inv. 21704 dated 03/03/03 and Inv. 21738 dated 04/08/03 from A/C 101-335-932-000 (Repairs) \$14,330.51. See Budget Amendment. Fire Dept.
10. SIGNATURE FORD - Warrant Office Vehicle - Inv. 6359 dated 04/02/03 from A/C 265-330-831-265 (Forfeiture) \$20,379.00. Police Dept.
11. SOMMERS, SCHWARTZ, SILVER... - Legal Services Water Dept. - Inv. 169148 dated 04/09/03 from A/C 592-536-817-000 (Prof/Consult) \$3,546.50. Water Dept.
12. WADE-TRIM/ASSOCIATES - Revised Site Plan Review Strip Center Van Born -

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Inv. 77681 dated 04/09/03 from A/C 101-801-817-000 (Prof/Consult) \$262.50.
Planning Comm.

13. WADE-TRIM/ASSOCIATES - Warren Avenue Zoning, Construction Administration - Inv. 77689 dated 04/09/03 and Inv. 77672 dated 04/08/03 from A/C 103-960-944-201 (Streetscape) \$2,574.36. CDBG.
14. WAYNE COUNTY DEPARTMENT OF ENVIRONMENT - ECPAD O/M 3rd Quarter - Inv. 215594 dated 04/11/03 from A/C 592-537-927-000 (ECPC) \$77,436.58. Water Dept.

Motion adopted.

- 03-151** Motion by Councilman Baron, seconded by Councilwoman Badalow, that the City Comptroller be authorized to advertise for bids, per specifications, for the 2003 CDBG (Community Development Block Grant) funded Sidewalk Ramp Program, per the request of Community Development Director Oliverio, communication dated April 9, 2003.

Motion adopted.

- 03-152** Motion by Councilman Baron, seconded by Councilwoman Blackburn, that the sole bid from Jorgensen Ford, 8333 Michigan, Detroit, MI 48210, for two (2) parcel delivery vans with two (2) trade-ins, in the amount of \$67,386.00 less trade-in value of \$8,500, for a total amount due of \$58,886.00, and payment thereof, be approved, per Public Service Administrator Blackburn, communication dated April 11, 2003. Monies for this purchase will come from Water Account #592-537-981-000.

Motion adopted.

- 03-153** Motion by Councilwoman Van Houten, seconded by Councilwoman Badalow, that the City Council concurs with and approves Change Order #1 with Angelo Iafrate Construction Company, 26400 Sherwood, Warren, MI 48091 for the Warren Avenue Streetscape Project's Landscape, for an increase of \$11,460.00, and payment thereof, which includes a one (1) year Landscape Maintenance Contract, per Community Development Director Oliverio, communication dated April 10, 2003. Further, that the Mayor and Clerk be authorized to sign the Change Order on behalf of the City.

Motion adopted.

- 03-154** Motion by Councilman Baron, seconded by Councilman Constan, that the Budget Amendment to cover the cost of repairs to a pumper and all other miscellaneous repairs be approved as follows:

INCREASE REVENUES
#101-000-699-000

APPROP. FUND BALANCE
\$25,000.00

INCREASE EXPENDITURES
#101-335-932-000

FIRE DEPT. REPAIRS
\$25,000.00

per, Comptroller Barrow, communication dated April 15, 2003.

Motion adopted.

- 03-155** Motion by Councilwoman Van Houten, seconded by Councilman Baron, that the City Council concurs with and approves the recommendation from the Spirit 2003 Festival Committee request for proposals to award the bid for adult beverage supplier contract to Central Distributors, Inc., 28100 Gorsuch Avenue, Romulus, MI 48174, at a cost of \$57.25 per barrel for Budweiser Genuine Draft beer, per Recreation Director Grybel, communication dated April 3, 2003.

Motion adopted.

- 03-156** Motion by Councilman Baron, seconded by Councilman Constan, that the minutes from the Community Development Action Plan II Public Hearing be received, contents noted and filed.

Motion adopted.

- 03-157** Motion by Councilman Baron, seconded by Councilwoman Blackburn, that the City Council concurs with and approves the Moroz-Pietrowski Post No. 9973, 4945 S Beech Daly, Dearborn Heights, MI 48125 annual Buddy Poppy street corner sales Thursday, Friday and Saturday, May 8, 9 and 10, 2003.

Motion adopted.

- 03-158** Motion by Councilwoman Van Houten, seconded by Councilman Baron, that the Resolution Decertifying Basic Cable Rates Regulation, be adopted as follows:

- A. The City of Dearborn Heights was certified by the Federal Communications Commission to regulate local cable television basic service, installation and equipment rates several years following adoption of the U S Cable Television consumers Protection and Competition Act of 1992 ("1992 Act")
- B. The basic service subject to local regulation consisted of at least all local broadcasters and any local public, educational or governmental access channels. Few homes subscribe to only the basic service. The vast majority also subscribe to what the Act refers to as "cable programming service".
- C. "Cable programming service" includes all program channels on a cable system that are not included in basic service which are not separately offered as pay-per-channel programming or pay-per-program services, which are not subject to any regulation. Only the Federal Communications Commission ("FCC") could regulate rates for "cable programming service".
- D. Provisions of the 1992 Act directing the FCC to regulate "cable programming service" that made local regulation of basic rates partially effective were repealed by the U S Telecommunications Act of 1996 effective March 31, 1999. Since the vast majority of homes subscribe to "cable programming service", unregulated pay-per-view and pay-per-channel service, basic service regulation was severely undermined.
- E. Moreover, there are now two cable operators effectively competing for customers in the City, Comcast and WideOpenWest. Either company could petition the FCC to decertify the City from regulating basic service, installation and equipment rates because they face effective competition but have chosen not to do so. Comcast continues to make numerous rate filings with the City, WOW does not....

NOW, THEREFORE, IT IS RESOLVED

1. The City determines that rate regulation no longer serves the interest of cable subscribers within the City.
2. The City directs its municipal cable television counsel, Neil J. Lehto, to deliver a copy of this resolution notifying the FCC that it no longer intends to regulate basic cable rates.
3. The City has received no consideration for its withdrawal of certification.

Per the recommendation of the Dearborn Heights Cable TV Regulatory Commission and its Counsel, Neil J. Lehto, O'Reilly, Rancilio, Nitz, Andrews, Turnbull & Scott, communication dated April 18, 2003.

Motion adopted.

- 03-159** Motion by Councilman Constan, seconded by Councilwoman Blackburn, that the Resolution Regarding Right-of-Way Regulation and Fees be adopted as follows:

The Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002 (the "Act") took effect November 1, 2002; and

The Act, among other things, provides for a uniform permit and permit fee for access to and use of the public rights-of-way by telecommunications providers; and

The Act further provides, among other things, for a distribution of funds from the

Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority (the "Authority"), established pursuant to Section 3 of the Act, *provided* the City takes certain action in compliance with the Act; and

The City previously adopted a Right-of-Way Management Ordinance, codified as Chapter 37 of the Code of Ordinances, and Resolutions regarding implementation of that Ordinance, including the establishment of fees.

Certain provisions of the Right-of-Way Management Ordinance and Resolutions and prior permits issued pursuant to them are not consistent with the Act.

The City has been and intends to continue in compliance with the Act and, under the criteria established by the Authority, wants to be eligible to receive the fee sharing payments in the first distribution by the Authority in 2003; and

In view of the Act and its requirements, the City desires to give additional instruction and direction to its personnel involved in the administration of the Right-of-Way Management Ordinance and Resolutions;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Effective November 1, 2002, the City will comply with the Act.
2. The City Clerk, with the assistance of the Directors of the Department of Building and Engineering and Public Services, is hereby authorized and directed to identify and compile a list of all telecommunications providers holding permits or authorizations issued by the City, all telecommunication providers who have paid fees to the City since 1990, all telecommunications providers identified in the City's engineering or construction permit files, all regulated telephone inter-exchange carriers and competitive access providers listed on the web site of the Michigan Public Service Commission, and all regulated local telephone companies licensed in Michigan listed on such web site.
3. The City Clerk, with the assistance of the City Attorney, is hereby authorized and directed to provide a copy of this Resolution to the cable companies providing service in the City, and to all telecommunications providers identified above, in satisfaction of the requirements of Section 13(4) of the Act.
4. Effective November 1, 2002, all permits issued by the City to telecommunication providers for use of the public right-of-ways prior to that date are modified pursuant to the Act to require only the payment of fees as provided in Section 8 of the Act, reserving any rights the City may have to fees due for the period ending October 31, 2002. If Section 8 of the Act is found to be invalid or unconstitutional, this modification of fees is void from the date of the modification.
5. The City Treasurer, based on the records of and in consultation with the City Clerk and Department of Building and Engineering and Public Services, is hereby directed to return to telecommunications providers, any payments or prorated portion of payments received by the City from such providers for access and usage of the public rights-of-way in the City after November 1, 2002 (other than any \$500 application fee allowed under the Act and any fees or funds received from the Authority).
6. The City Clerk, the Directors of the Departments of Building and Engineering and Public Services, and all other City personnel involved in the administration and enforcement of the Right-of-Way Management Ordinance and Resolutions are directed to comply with the Act and otherwise disregard provisions of the Ordinance and Resolutions which may conflict with the Act.

Per, Counselor Gary L. Dovre, Secrest, Wardle, Lynch, Hampton, Truex and Morley, communication dated April 17, 2003.

Motion adopted.

the meeting be adjourned.

Motion adopted.

The meeting adjourned at 8:24 p.m.

JOYCE A. ROBBINS
CITY CLERK

ELIZABETH J. AGIUS
CITY COUNCIL CHAIR

MARIA E. LAWRENCE
COUNCIL/CLERK SECRETARY