

**CITY OF SWARTZ CREEK
SWARTZ CREEK, MICHIGAN
MINUTES OF THE COUNCIL MEETING
DATE 1/27/2014**

The meeting was called to order at 7:02 p.m. by Mayor Krueger in the Swartz Creek City Council Chambers, 8083 Civic Drive.

Invocation and Pledge of Allegiance to the Flag.

Councilmembers Present: Abrams, Gilbert, Hurt, Krueger, Porath, Shumaker.

Councilmembers Absent: Hicks

Staff Present: City Manager Adam Zettel, Public Services Director Tom Svrcek, City Clerk Juanita Aguilar, Lt. Matthew Bade, City Attorney Mike Gildner.

Others Present: Tommy Butler, Jim Florence, Sharon Shumaker, Jenye Keeley, Shirley Oliver, Chris Yager, Sean Kennedy, Bob Plumb, Richard Mattson.

Resolution No. 140127-01

(Carried)

Motion by Councilmember Hurt
Second by Councilmember Shumaker

I Move the Swartz Creek City Council excuse the absence of Councilmember Hicks due to her being ill.

YES: Gilbert, Hurt, Krueger, Porath, Shumaker, Abrams.
NO: None. Motion Declared Carried.

APPROVAL OF MINUTES

Resolution No. 140127-02

(Carried)

Motion Councilmember Porath
Second by Councilmember Hurt

I Move the Swartz Creek City Council hereby approve the Minutes of the Regular Council Meeting, held Monday, January 13, 2014 to be circulated and placed on file.

YES: Hurt, Krueger, Porath, Shumaker, Abrams, Gilbert.
NO: None. Motion Declared Carried.

APPROVAL OF AGENDA

Resolution No. 140127-03

(Carried)

Motion by Mayor Pro-Tem Abrams
Second by Councilmember Hurt

I Move the Swartz Creek City Council approve the Agenda as presented, for the Regular Council Meeting of January 13, 2014, to be circulated and placed on file.

YES: Hurt, Krueger, Porath, Shumaker, Abrams, Gilbert.
NO: None. Motion Declared Carried.

REPORTS AND COMMUNICATIONS:

City Manager's Report

Resolution No. 140127-04

(Carried)

Motion by Councilmember Shumaker
Second by Mayor Pro-Tem Abrams

I Move the Swartz Creek City Council approve the City Manager's Report of January 27, 2014, to be circulated and placed on file.

YES: Krueger, Porath, Shumaker, Abrams, Gilbert, Hurt.
NO: None. Motion Declared Carried.

Discussion Ensued.

MEETING OPENED TO THE PUBLIC

Pastor Chris Yager, 4187 Silver Maple, mentioned one of his church member been talking to one of the councilmembers and they would like to get involved with the community this year and see what they can do to reach out to the community. He asked the council if they had suggestions on things the church could help with. Councilmember Shumaker said he may want to come to the next Park Board Meeting. Public Service Director Tom Svrcek invited him to come. Mayor Krueger asked him to encourage his members to attend the city council meetings.

COUNCIL BUSINESS

RESCINDING OF LOT SALE RESOLUTIONS

Resolution No. 140127-05A

(Amended Below)

Motion by Councilmember Gilbert
Second by Councilmember Hurt

WHEREAS, the City of Swartz Creek City Council passed resolution 131014-09 to offer certain properties in Springbrook East and Heritage Village condominiums for sale to specific interests, based upon certain contingencies, and;

WHEREAS, the council subsequently passed resolution 131028-07 to sell five lots in Heritage Village condominium to three buyers, and;

WHEREAS, City Charter Section 13.3(b)(2) requires a land sale resolution to be passed in its final form and placed on file for 30 days for public inspection before any sale can be executed, and;

WHEREAS, the city attorney believes the process taken may be subject to disputes over validity.

NOW THEREFORE, I Move the City of Swartz Creek rescind resolutions 131014-09 and 131028-07 and direct the city clerk to make adjustments to the records to reflect such changes.

BE IT FURTHER RESOLVED, that the city council directs staff to renegotiate the proposed sales in Heritage Village and bring back a resolution that satisfies the charter requirements.

Resolution No. 140127-5B
Motion Amended

(Carried)

Motion by Councilmember Hurt
Second by Shumaker

I Move the City of Swartz Creek Council to amend to state as

BE IT FURTHER RESOLVED, that the city council directs staff to generate a sales instrument reflecting conditions previously agreed on last fall and satisfies charter requirements.

YES: Shumaker, Abrams, Gilbert, Hurt, Krueger.
NO: Porath. Motion Declared Carried

Resolution No. 140127-05C
Motion as Amended

(Carried)

Motion by Councilmember Gilbert
Second by Councilmember Hurt

WHEREAS, the City of Swartz Creek City Council passed resolution 131014-09 to offer certain properties in Springbrook East and Heritage Village condominiums for sale to specific interests, based upon certain contingencies, and;

WHEREAS, the council subsequently passed resolution 131028-07 to sell five lots in Heritage Village condominium to three buyers, and;

WHEREAS, City Charter Section 13.3(b)(2) requires a land sale resolution to be passed in its final form and placed on file for 30 days for public inspection before any sale can be executed, and;

WHEREAS, the city attorney believes the process taken may be subject to disputes over validity.

NOW THEREFORE, I Move the City of Swartz Creek rescind resolutions 131014-09 and 131028-07 and direct the city clerk to make adjustments to the records to reflect such changes.

BE IT FURTHER RESOLVED, that the city council directs staff to generate a sales instrument reflecting conditions previously agreed on last fall and satisfies charter requirements.

YES: Shumaker, Abrams, Gilbert, Hurt, Krueger, Porath.
NO: Porath. Motion Declared Carried

HAZARDOUS WASTE REQUEST

Resolution No. 140127-06

(Carried)

Motion by Councilmember Hurt
Second by Councilmember Porath

I Move the City of Swartz Creek approve payment in the amount of \$750.00 to Keep Genesee County Beautiful for the purpose of supporting the 2014 hazardous household waste collection program, such funds to be allocated from the contractual service account of the city's waste services fund.

YES: Abrams, Gilbert, Hurt, Krueger, Porath, Shumaker.
NO: None. Motion Declared Carried.

MUNDY TOWNSHIP BUILDING SERVICES AGREEMENT

Resolution No. 140127-07

(Carried)

Motion by Councilmember Porath
Second by Councilmember Hurt

WHEREAS, the city operates a building services department that performs permitting, reviews, and inspections for building and trade occupations within the city limits ; and

WHEREAS, this is a fundamental service that is fundamental to the health and safety of the community; and

WHEREAS, Public Act 63 of 2011, introduced the Economic Vitality Incentive Program, requires municipalities receiving over \$4,500 in revenue sharing to engage in numerous activities, including service consolidation; and

WHEREAS, the city is currently without a building official; and

WHEREAS, a study commissioned by the city recommended that the city cooperate with the Township of Mundy to perform building services.

NOW, THEREFORE, I Move the City of Swartz Creek hereby approves the agreement for joint services with Mundy Township as attached and directs staff to integrate the terms of the agreement into the official minutes of record and to establish and set procedures, policies, and duties as necessary to implement and carry out building services as outlined in the agreement.

YES: Gilbert, Hurt, Krueger, Porath, Shumaker, Abrams.

NO: None. Motion Declared Carried

SPRINGBROOK COLONY UTILITY TRANSFER

Resolution No. 140127-08

(Carried)

Motion by Mayor Pro Tem Abrams
Second by Councilmember Hurt

WHEREAS, Springbrook Colony Condominium (“Springbrook”), a site condominium project, was established in 1986 and work on the development of same commenced in 1986; and

WHEREAS, the Master Deed for Springbrook was initially recorded with the Genesee County Register of Deeds on September 18, 1986, at Liber 1551 Pages 3661-3699 (Genesee County Condominium Subdivision Plan #60); and

WHEREAS, the Master Deed provided for the establishment of the Association and the Association’s Bylaws (the Master Deed, the Association’s Bylaws, and their amendments, are collectively referred to herein as the “Condominium Documents”); and

WHEREAS, the Association is the owner of certain sanitary sewer and water lines that run through Springbrook; and

WHEREAS, the Association desires to transfer the ownership of said sanitary sewer system and water system, including sewer drains (“the Utility Systems”) to the City; and

WHEREAS, the City is willing to take over the ownership and operation of the Utility Systems under the terms and conditions set forth in this agreement, the primary reason being the repeated demands for such ownership received from the Michigan Department of Environmental Quality (DEQ).

NOW, THEREFORE, it is hereby agreed by and through the City and the Association, acting through their duly authorized representatives, as follows:

1. Composition of the Utility Systems.

The Utility Systems consist of that sanitary sewer system and water system currently existing in Springbrook (excluding the leads to individual units) as more particularly described and depicted in Exhibit “A” hereto.

2. Transfer, Dedication and Acceptance of the Utility Systems.

The Association hereby conveys, transfers and grants to the City and dedicates to the public the Utility Systems up to the point of their connection to the water and sewer leads at each unit in Springbrook as depicted on Exhibit “A”; and the City agrees to accept said grant of dedication and conveyance and to assume ownership and operation of the Utility Systems as described in Exhibit “A;” provided, however, that if such dedication requires an amendment to the condominium master deed to be effective, the City shall be under no obligation to accept such dedication unless it is provided with evidence that such amendment has been completed. Otherwise, the dedication by the Association shall be accomplished in the manner required by law and shall be in a form approved by the City’s legal counsel. The City’s acceptance of the dedication by the Association shall be by city council resolution.

3. Repairs and Indemnification of City.

The City shall be responsible for the cost of maintenance and repairs to the Utility Systems. Any other damage caused by maintenance and repairs, including, but not limited to streets, curbs, gutters, drainage structures, sidewalks, driveways, lawns, gardens, etc., shall be the responsibility of the Association. The Association agrees to hold the City harmless for any damage related to the repair and maintenance of the Utility Systems. Following any work performed by the City or its contractors, the City shall, pursuant to its standard procedures, restore the work area to grade, seed where appropriate and re-gravel streets or sidewalks as necessary. In that regard, the Association shall assign to the City the easements it may have, if any, for the maintenance, repair and/or replacement of the Utility Systems or any component thereof and shall, as may be necessary, grant to the City easements for maintenance, repair and/or replacement of the Utility Systems. The easement shall have a width of ten (10) feet for the water lines and shall extend five (5) feet on either side of the center of said water lines. The easement shall have a width of twenty (20) feet for the sewer lines and shall extend ten (10) feet on either side of the center of said sewer lines.

4. Term.

The transfer of the water and sewer system from the Association to the City, and the terms of this agreement, are in perpetuity.

5. Notices.

Whenever it is necessary or required by law or by this agreement that notice be given by one party to this agreement to the other party, unless otherwise specifically authorized in writing, such notice shall be personally delivered or sent by first class mail, postage prepaid, to the following:

To the City:

Mr. Adam Zettel
City Manager
City of Swartz Creek
8083 Civic Drive
Swartz Creek, MI 48473

With a copy to:

Richard J. Figura, Esq.
SIMEN, FIGURA & PARKER, P.L.C.
5206 Gateway Centre
Flint, MI 48507

To the Association:

Larry Carter
Resident Agent
5454 gateway Center, Suite A
Flint, Michigan 48507

With a copy to:

Jeremy R.M. Piper, Attorney
503 S. Saginaw Street, Ste. 1426
Flint, Michigan 48502

6. Resident agent and officers of the Association.

The Association shall advise the City annually by January 15 of the names and addresses of its resident agent and its officers.

7. Entire Agreement.

This agreement constitutes the entire agreement between the parties and shall be deemed to supersede and cancel any other agreements between them relating to the transactions herein contemplated. None of the prior and contemporaneous negotiations, preliminary drafts, or prior versions of this contract leading up to its execution and not set forth herein shall be used by any of the parties to construe or affect the validity of this contract.

8. Amendments.

This agreement may be amended or modified only by a document in writing executed by both the City and the Association.

9. Assignment.

Any assignment of this agreement by either party to another person or entity shall not be effective against the other party unless such other party approves such assignment in writing.

10. Applicable Law.

This Agreement shall be governed by, interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of Michigan.

11. Severability.

If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement which shall remain in full force and effect and enforceable in accordance with its terms.

YES: Hurt, Krueger, Porath, Abrams.

NO: Shumaker, Gilbert. Motion Declared Carried

PARK FEE WAIVER REQUEST – GFWC SWARTZ CREEK WOMENS CLUB

Resolution No. 140127-09

(Carried)

Motion by Councilmember Shumaker
Second by Councilmember Hurt

I Move the City of Swartz Creek grant a waiver of fees and approve the use of Elms Road Park Pavilion #2 on Sunday, September 7, 2014, 12:00 noon to 6:00pm, for the Swartz Creek branch of the GFWC Women’s Club.

YES: Hurt, Krueger, Porath, Shumaker, Abrams, Gilbert.

NO: None. Motion Declared Carried

PARK FEE WIAVER REQUEST – GIRL SCOUTS OF AMERICA

Resolution No. 140127-10

(Carried)

Motion by Councilmember Gilbert
Second by Councilmember Hurt

I Move the City of Swartz Creek grant a waiver of fees and approve the use of Elms Road Park Pavilion #2 on Sunday, September 21, 2014, 12:00 noon to 6:00pm, for the Swartz Creek branch of the Girl Scouts of America Reunion.

YES: Krueger, Porath, Shumaker, Abrams, Gilbert, Hurt.
NO: None. Motion Declared Carried

SEWER LINING AND INSPECTION SERVICES

Resolution No. 140127-11

(Carried)

Motion by Councilmember Hurt
Second by Mayor Pro Tem Abrams

WHEREAS, the city selected Liqui-Force Services Inc., to perform certain sewer inspections and repairs in December 2008; and

WHEREAS, Liqui-Force Services Inc., was selected based upon a competitive request-for-proposal process that included fixed unit costs for services; and

WHEREAS, the scope of work was to span four years and terminate in December 2012, but circumstances resulted in the delay of specific work items; and

WHEREAS, Liqui-Force has agreed to extend their unit costs through June of 2014 for the purpose of completing work on the sanitary sewer system.

NOW, THEREFORE, I Move the City of Swartz Creek hereby approves the proposal to perform inspections and repair on the sanitary sewer system as outlined on the updated proposal dated April 15, 2013, in the amount of \$148,429, and hereby amends the fiscal year 2014 city budget to allocate such amount to the 591 fund.

YES: Porath, Shumaker, Abrams, Gilbert, Hurt, Krueger.
NO: None. Motion Declared Carried

FANG DUES & BUDGET ADJUSTMENT

Resolution No. 140127-12

(Carried)

Motion by Councilmember Porath
Second by Councilmember Shumaker

I Move the City of Swartz Creek City Council approve the payment of \$7,850.60 to the Flint Area Narcotics Group (FANG) for annual dues, and direct staff to amend

the budget to reflect a transfer from Fund 101 unencumbered unreserved fund balance, to the appropriate account within the police department.

YES: Shumaker, Abrams, Gilbert, Hurt, Krueger, Porath.

NO: None. Motion Declared Carried

BLOOD DRAW CONTRACT (OWI)

Resolution No. 140127-13

(Carried)

Motion by Mayor Pro Tem Abrams

Second by Councilmember Hurt

WHEREAS, the city has contracted with MEDLAW for blood draws performed on behalf of the police department in carrying out enforcement related to alcohol and drug related offenses ; and

WHEREAS, charges incurred for this service were recoverable; and

WHEREAS, MEDLAW is no longer in business and a new service provided is needed..

NOW, THEREFORE, I Move the City of Swartz Creek hereby approves the contract with GLC-LAB, L.L.C. and direct Chief Clonger to execute and file all required documentation to formalize the agreement.

YES: Abrams, Gilbert, Hurt, Krueger, Porath, Shumaker.

NO: None. Motion Declared Carried

ADOPT ORDINANCE #411, SECTION 10-143, RETAIL FRAUD

Resolution No. 140127-14

(Carried)

Motion by Councilmember Shumaker

Second by Councilmember Hurt

I Move the City of Swartz Creek ordain:

CITY OF SWARTZ CREEK

ORDINANCE NO. 411

AN ORDINANCE TO AMEND SECTION 10-143 OF THE CODE OF ORDINANCES OF THE CITY OF SWARTZ CREEK TO INCREASE THE POSSIBLE TERM OF IMPRISONMENT FROM 90 DAYS TO 93 DAYS.

THE CITY OF SWARTZ CREEK ORDAINS:

Section 1. Amendment of Section 10-143 of the Code of Ordinances of the City of Swartz Creek.

Section 10-143 of the Code of Ordinances of the City of Swartz Creek, Michigan, is hereby amended to read as follows:

Sec. 10-143.- Retail fraud.

It shall be unlawful for any person to commit the following in a store or in its immediate vicinity:

- (1) While a store is open to the public, alter, transfer, remove and replace, conceal, or otherwise misrepresent the price at which property is offered for sale, with the intent not to pay for the property or to pay less than the price at which the property is offered for sale.*
- (2) While a store is open to the public, steal property of the store that is offered for sale.*
- (3) With intent to defraud, obtain or attempt to obtain money or property from the store as a refund or exchange for property that was not paid for and belongs to the store.*
- (4) A person who violates this section shall be guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of \$500.00 or both.*

Section 2. Effective Date.

This ordinance shall be effective on the 1st day of March, 2014.

At a regular meeting of the City Council of the City of Swartz Creek held on January 27, 2014, adoption of the foregoing ordinance was moved by Councilmember Shumaker and supported by Councilmember Hurt.

Voting for:

Voting against:

The Mayor declared the ordinance adopted.

David A. Krueger
Mayor

CERTIFICATION

The foregoing is a true copy of Ordinance No. 411, which was enacted by the City Council of the City of Swartz Creek at a regular meeting held on January 27, 2014.

Juanita Aguilar, City Clerk

YES: Gilbert, Hurt, Krueger, Porath, Shumaker Abrams.

NO: None. Motion Declared Carried

Kroger Tax Appeal

Discussion

City Manager Adam Zettel, thinks the City should fight the Kroger appeal. He proceeded to answer any questions from the council and explain why. Attorney Mike Gildner explained to the council that additional funds would be needed to acquire the information needed to fight the appeal.

MEETING OPEN TO PUBLIC:

None.

REMARKS BY COUNCILMEMBERS:

Councilmember Gilbert commented he is waiting for spring.

Councilmember Shumaker commented on some properties that are being snow plowed and they are leaving large piles of snow on the sidewalks.

Councilmember Porath wanted clarification on the time schedule for the sewer lining and inspection services. City Manager Adam Zettel explained it initially started off as a four year plan, and if problems are found in the lines inspected this year, they will be worked on the following year. We will look at a new capital improvement plan this summer.

Mayor Pro Tem Abrams commented on the weather.

Mayor Krueger wanted to let council know about the pictures Councilmember Porath took of the Mayor.

Adjournment

Resolution No. 140127-15

(Carried)

Motion by Councilmember Shumaker
Second by Councilmember Gilbert

I Move the City of Swartz Creek adjourn the Regular Session of the City Council meeting at 9:37 p.m.

YES: Unanimous Voice Vote.
NO: None. Motion Declared Carried.

David A. Krueger, Mayor

Juanita Aguilar, City Clerk