

Agenda, Bay Village City Council
Regular Meeting, Council Chambers

January 5, 2015
8:00 p.m.
Caucus 7:30 p.m.
in Conference Room
(Public Welcome)

Paul A. Koomar, President of Council, Presiding
Pledge of Allegiance/ Steve Lee, Councilman-at-large
Roll Call
Reading of Minutes – Special Meeting of Council – December 29, 2014

ANNOUNCEMENTS

REPORTS

Mayor Sutherland	Director of Community Services Selig
Director of Law Ebert	Police Chief Spaetzel
Director of Finance Mahoney	Fire Chief Lyons
Director of Recreation Enovitch	
Director of Public Service Thomas	

COMMUNICATIONS

AUDIENCE

COMMITTEE OF THE WHOLE

ENVIRONMENT, SAFETY & COMMUNITY SERVICES COMMITTEE – Mr. Lee

FINANCE AND CLAIMS- Mr. Clark

Ordinance 14-115 establishing fees for outside legal services, and declaring an emergency.
(Second Reading) (First Reading 12-29-14)

Motion to remove 2015 Budget Process from the Matters Pending before Council Committee List.

Motion to acknowledge receipt of December, 2014 Financial Reports of the City of Bay Village.

PUBLIC IMPROVEMENTS/STREETS/SEWERS/DRAINAGE COMMITTEE-Mr. Tadych

Motion to remove Saddler Beach Easement and Storm Water System Improvements from the Matters Pending before Council Committee List.

PLANNING, ZONING & PUBLIC GROUNDS & BUILDINGS COMMITTEE – Mrs. Lieske

RECREATION AND PARK IMPROVEMENTS COMMITTEE – Mr. Henderson

Agenda
Regular Meeting of Council
January 5, 2015

SERVICES, UTILITIES & EQUIPMENT COMMITTEE – Mr. Vincent

Ordinance No. 14-114 authorizing all actions necessary to effect an Opt-Out Natural Gas Aggregation Program pursuant to Section 4929.26, Ohio Revised Code, directing the County Board Of Elections to submit a Ballot Question To The Electors, and declaring an emergency. (Second Reading) (First Reading December 15, 2014)

MISCELLANEOUS

Motion to convene to Executive Session regarding contracts: Cleveland Water Agreement
Clark

CAHOON MEMORIAL PARK TRUSTEES

Agenda
Regular Meeting of Council
January 5, 2015

Procedure

Section 2.14 - Effective Date
C.O. 111.10 - Council Rules for Legislation

Roll call on suspension of Charter Rules:

Every ordinance or resolution shall be read on three different days unless two-thirds (2/3) of the total number of Council members provided for in this Charter dispense with the rules.

Roll call on suspension of Council Rules:

No ordinance or resolution shall be passed unless a written copy thereof is before the Council ...at least 24 hours before any meeting of Council at which action...is contemplated.

Roll call on inclusion of the emergency clause:

All ordinances and resolutions shall become effective forty (40) days after their passage by Council unless a later effective date is set forth or an earlier date is established. Resolutions to initiate any public improvement shall become effective immediately upon their passage and approval by the Mayor.

It is required that two-thirds (2/3) of the total number of Council members provided for by this Charter vote affirmatively to enact with the emergency provisions. This clause allows legislation to become effective immediately upon passage and approval by the Mayor.

NOTE: Regular and Special Meetings of Council are scheduled for 8:00 p.m. However, Council generally meets informally at 7:30 p.m. prior to a Regular or Special meeting, and said portion, usually held in the conference room, is open to the public.

City of Bay Village

Council Minutes, Special Meeting
Council Chambers 6:25 p.m.

December 29, 2014

Paul A. Koomar, President of Council, Presiding

Present: Clark, Henderson, Koomar, Lee, Lieske, Vincent, Mayor Sutherland

Not Present: Mr. Tadych

Also Present: Law Director Ebert, Finance Director Mahoney

Council and members of the administration had assembled at 5:57 p.m. in the Conference Room to review agenda items; this was open to the public.

During the review, Mr. Koomar discussed the ordinance on this evening's agenda establishing fees for outside legal service. Mr. Clark suggested placing the ordinance on first reading this evening, noting that there has been quite a bit of input in drafting the legislation, resulting in an amicable chart that is satisfactory to all parties. The ordinance will be placed on first reading this evening.

Mayor Sutherland asked if the ordinance extends until January, is Mr. Ebert paid at the old rate until it is passed. Mr. Lee asked if there are any matters pending with outside legal service. Mr. Ebert stated that he is not aware of any pending matters, unless there is a Workers Compensation claim. Mr. Lee noted that since Mr. Ebert would not bill for January until February, he could be at the lower rate without the problem.

Mr. Ebert noted that the Assistant to the Law Director is a separate line item as a vendor contract. Mr. Lee noted the line item for the Assistant to the Law Director represents a 2% increase from 2014 to 2015. He asked how many hours per week the Assistant typically works. Mr. Ebert stated that the assistant works at city hall three mornings per week and finishes some work at the law office. Mr. Koomar, praised the work of the Assistant to the Law Director, Lorree Lewis, noting that she works efficiently and quickly.

Mr. Henderson stated that he just wants to understand the phrase "or before administrative agencies" as written in the proposed ordinance. Mr. Ebert stated that this would include agencies such as the Workers Compensation Bureau, Industrial Commission, the Equal Opportunities Commission, Environmental Protection Agency, Unemployment Compensation, and any type of agency where he would have to attend a hearing. Mr. Henderson asked if this work includes anything in regard to grievances or unfair labor practices. Mr. Ebert stated that it would include anything in that regard, insofar as contractual or arbitration with the unions.

Mr. Clark stated that he will introduce the final amendment to the 2014 Appropriations Ordinance this evening. Finance Director Mahoney is close to finalizing the transfers that will

Special Meeting of Council
December 29, 2014

be made that will increase the General Fund budget. Mr. Koomar asked when the transfer of the General Reserve Fund will be made. Mrs. Mahoney stated that the transfer will be made Tuesday, December 30, 2014. An additional \$8,000 was received today in Property Taxes that was not expected. Mr. Clark stated that the goal is to start the General Fund Balance at \$1 million with the excess going into the General Reserve Fund. This will put the General Reserve Fund into a little over \$400,000 at the beginning of 2015, based on good performance for the year.

Mr. Koomar asked if the budget just passed for 2015 reflects the full year of SAFEbuilt, Inc. receipts and expenditures of 2014. Mrs. Mahoney stated that it does reflect the full year of 2014.

The Accrued Benefits Fund was used to pay for unused vacation time to even out the cost for that in the future instead of accruing them ahead and paying large sums out of the General Fund.

Across the board, utilities were higher for municipal buildings this year. Reimbursements from the state will be received for the additional catch basin work done on Lake Road. Insurance proceeds for water damage to the Fire Department and damage to the Community Service Vehicle have been received and funds will be appropriated to pay the invoices. The ceiling at the Fire Department has been repaired.

The administrative compensation ordinance to be introduced this evening will be amended by reading to include a 2% increase for the Law Director and an increase of the minimum wage to \$8.10 per hour for part time and seasonal employees. As a trade-off for the 2% increase for the Law Director, there has been an agreement about the amount of money the Law Director will pay for health insurance monthly. The current monthly premium of \$219.91 is in effect until March 1, 2015. When that premium goes up, the Law Director's payment will increase as well.

Mr. Henderson asked if the requirement of Mr. Ebert to pay a higher amount toward his health care is because he works between 30 and 39 hours per week. The Mayor stated that it was a negotiated compromise.

Mr. Koomar stated that Mr. Ebert passed the 29 hour per week written in the Affordable Care Act, which is what triggered his requirement for health care.

Mr. Henderson asked if there are any other part time employees working less than 40 hours per week that get health insurance benefits. Mayor Sutherland stated that we do have part time employees and they do not get health insurance. Mr. Henderson stated that he is concerned we are creating a system where we have one employee who is not full time, 40 hours per week, receiving health insurance benefits, and we don't have that for anyone else.

Mayor Sutherland stated that he works 30 hours, and he is also a director. No other part time employee works 30 hours. If they hit 30 hours, they would be eligible for health care as well.

Mr. Henderson stated that from the Affordable Care Act standard of 30 hours he would be full time, and asked why we would charge him more money than other employees. Mr. Koomar stated that from what we have seen in other public employment systems, with the cost of health

care increasing over the years, and part time employees, there has always been increased premium in the workplace. Mr. Ebert stated that there are different agreements in different cities with Law Directors. Mayor Sutherland stated it is a unique position and it was a negotiated compromise.

Mr. Henderson stated that he sent an email out to the Council this week, attaching a survey from the accounting firm PWC, involving over 1,200 employers. Roughly 53% of the employers are not offering medical benefits coverage to part time employees. Among those that did not, most do not plan to do so in 2015. And, of the most that did, it was split almost evenly between keeping the premium the same for the part time and for the full time. Mr. Henderson stated that his current position is that he is completely open to discussion, but his concern is we are effectively creating a precedent that will offer health insurance to any part time employee and if they have more than 30 hours but less than 40 hours we are going to charge them \$219 instead of the standard rate. And, if they have 40 hours we are going to charge them the standard rate. It's complicated.

Mrs. Mahoney stated that it is complicated but it was a compromise. Mr. Ebert stated that it is also grandfathered as it goes back to previous years. Mayor Sutherland stated that they are managing the part time employees so that they will not exceed 30 hours. Law Director Ebert noted that when he performs duties as Acting Mayor or Prosecutor he is not paid additional compensation.

Mr. Lee noted that this compensation ordinance is a one-year ordinance and does not apply to 2016. Mayor Sutherland added that adjustments can be made as conditions change.

Mrs. Lieske stated that she sent out information on health insurance from Cleveland State University. If a CSU employee works 20 to 29 hours per week the only health care option is the Metro Health Plan. Those rates are significantly higher than the part time 30 to 39 hours per week employees, or the full time employees. The rates for the 30 to 39 hours per week employees are significantly higher than those for full time employees. The rates apply to all employees, from housekeeping to Vice Presidents.

Mr. Henderson noted that it is confusing because most companies use 40 hours per week to define full time employment. With the Affordable Care Act using 30 hours per week, we have to figure out a new classification. Mayor Sutherland stated that in the public sector there are employees considered full time at 35 hours per week.

Mr. Vincent asked if there are part time police or firefighters that work more than 20 hours per week. Mayor Sutherland stated that the City does not have part time firefighters. We do have part time police officers that work less than 30 hours per week.

President of Council Koomar called the meeting to order at 6:25 p.m. with a roll call and Pledge of Allegiance led by Dwight Clark, Councilman-at-large.

AUDIENCE

Special Meeting of Council
December 29, 2014

The following audience members signed in this evening: Dick Majewski, Conda Boyd.

Mr. Koomar called for a reading of the minutes of the Regular Meeting of Council held December 15, 2014. **Motion** by **Clark** to dispense with the reading of the minutes and approve the minutes of the Regular Meeting of Council held December 15, 2014 as prepared and distributed.

Motion passed 6-0.

Mr. Clark introduced **Ordinance 14-115** establishing fees for outside legal services, and declaring an emergency.

Ordinance 14-115 was placed on first reading.

Mr. Clark introduced and read **Ordinance No. 14-116** to amend appropriations for the current and other expenditures of the City of Bay Village for the Fiscal Year, 2014, as previously appropriated in Temporary Appropriations 13-119 and 14-01, and Annual Appropriations 14-02, 14-18, 14-51, 14-68, 14-79, 14-87, and 14-93, and declaring an emergency, and moved for adoption.

There being no further discussion, Mr. Koomar called for a vote on the motion to adopt Ordinance No. 14-116.

Roll Call on Suspension of Charter Rules:

Yeas- Clark, Henderson, Koomar, Lee, Lieske, Vincent

Nays -None

Roll Call on Suspension of Council Rules:

Yeas- Clark, Henderson, Koomar, Lee, Lieske, Vincent

Nays -None

Roll Call on Use of the Emergency Clause:

Yeas- Clark, Henderson, Koomar, Lee, Lieske, Vincent

Nays -None

Roll Call on Adoption:

Yeas-Clark, Henderson, Koomar, Lee, Lieske, Vincent

Nays-None.

Mr. Koomar announced adoption of Ordinance No. 14-116, an emergency measure, by a vote of 6-0.

Mr. Clark read **Ordinance 14-112** amending Section 1 of Ordinance 14-98 (amending by reading Line 6, the Director of Law, amending the annual salary to read \$72,296, and Lines 15 and 16 to amend by reading the minimum hourly amount for part time and seasonal employees to be \$8.10 effective January 1, 2015, due to the increase in the federal minimum wage) regarding rates of compensation for the officers and employees of the General Administration Department, and those employees of the City not covered by separate labor contract, for the Calendar Year

Special Meeting of Council
December 29, 2014

2015 and thereafter, and declaring an emergency. (First Reading 12-8-14 amended by reading) (Second Reading 12-15-14), and moved for adoption.

Mayor Sutherland expressed appreciation to Mr. Koomar and Mr. Clark for their leadership in correcting the inconsistencies in the ordinance. Mr. Koomar thanked Mayor Sutherland for her assistance as well.

There being no further discussion, Mr. Koomar called for a vote on the motion to adopt Ordinance No. 14-112.

Roll Call on Suspension of Charter Rules:

Yeas- Koomar, Lee, Lieske, Vincent, Clark

Nays -Henderson

Roll Call on Suspension of Council Rules:

Yeas- Koomar, Lee, Lieske, Vincent, Clark

Nays -Henderson,

Roll Call on Use of the Emergency Clause:

Yeas- Koomar, Lee, Lieske, Vincent, Clark

Nays -Henderson,

Roll Call on Adoption:

Yeas-Koomar, Lee, Lieske, Vincent, Clark

Nays-Henderson

Mr. Koomar announced adoption of Ordinance No. 14-112, an emergency measure, by a vote of 5-1.

There being no further discussion, the meeting adjourned at 6:30 p.m.

Paul A. Koomar, President of Council

Joan Kemper, Clerk of Council

ORDINANCE NO: 14-115
INTRODUCED BY: Mr. Clark

AN ORDINANCE
ESTABLISHING FEES FOR OUTSIDE LEGAL SERVICES,
AND DECLARING AN EMERGENCY

WHEREAS, the Mayor has appointed Gary Ebert as Director of Law; and

WHEREAS, the Director of Law and his firm of Seeley, Savidge, Ebert and Gourash, LPA ("SSEG"), may be retained by the City from time to time as an independent contractor for extraordinary services under terms acceptable to the City, including those set forth herein; and

WHEREAS, the City desires to set forth the compensation arrangements for such services; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Bay Village, State of Ohio, that:

SECTION 1. Extraordinary Services. For any professional services beyond those normally performed by the Director of Law in his capacity as Director of Law (such services are more particularly described in Section 4.3 of the Charter of the City and on Exhibit A attached hereto), including but not limited to representing the City in court or before administrative agencies and for professional services on any litigated matter where the City or any of its representatives in their official capacity are named as a party, the Director of Law and/or members of SSEG, shall be paid at the hourly rates as follows:

HOURLY RATES AND EXPENSES

	<u>2014</u>	<u>2015 and Subsequent Years</u>
Director of Law/Attorneys	\$200.00 per hr.	Not to Exceed \$170.00 per hr.
Associate Attorneys		
(Less than five (5) years experience)	\$175.00 per hr.	Not to Exceed \$150.00 per hr.
Paralegals	\$100.00 per hr.	Not to Exceed \$100.00 per hr.

As well as being reimbursed for all reasonable out-of-pocket expenditures, including copies, long distance telephone charges, courier or overnight delivery charges based upon itemized monthly bills and statements of services, which shall be submitted by the Director of Law and the firm and duly approved by the Mayor and Finance Director.

SECTION 2. Notification and Monthly Billing. The Director of Law shall notify Council at the commencement of extraordinary services and prepare a preliminary budget and advise Council as to status and cumulative expenditures on each matter on a monthly basis.

SECTION 3. Ordinance No. 13-136 is hereby repealed.

SECTION 4. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 5. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of the inhabitants of the City of Bay Village by reason of the immediate necessity of permitting said change to occur at the beginning of a month. Wherefore, this Ordinance shall take effect immediately upon its passage and approval by the Mayor.

ADOPTED: _____

President of Council

Clerk of Council

APPROVED: _____

Mayor

EXHIBIT A

Services Normally Performed by the Director of Law

1. Attendance at City Council meetings, and as needed or requested at committee, board, and commission meetings (BZA, Planning Commission, ABR, Civil Service Commission, Charter Review, etc.)
2. Written legal opinions
3. Legal assistance and guidance to departmental directors
4. Available at all times for procedural/ legal questions by on-duty police officers
5. Conflict resolution between the City and residents and resident/resident disputes
6. Review, negotiation and drafting of all contracts and other legal documents
7. Writing legislation
8. Litigation avoidance
9. Interpretation of state, federal, and local laws
10. Supervision of the City Prosecutor
11. Fills in for the City Prosecutor when he is unavailable or on vacation
12. Sets strategy for dealing with property violations
13. Advises Administration on compliance with bargaining contracts
14. Advises Administration on disciplinary procedures for both bargaining and non-bargaining employees
15. Legal research
16. Acting Mayor responsibilities in the absence of the Mayor, if waived by the President of Council

ORDINANCE NO. 14-114
INTRODUCED BY: Mr. Vincent

AN ORDINANCE

**AUTHORIZING ALL ACTIONS NECESSARY TO EFFECT AN OPT-OUT
NATURAL GAS AGGREGATION PROGRAM PURSUANT TO SECTION 4929.26,
OHIO REVISED CODE, DIRECTING THE COUNTY BOARD OF ELECTIONS TO
SUBMIT A BALLOT QUESTION TO THE ELECTORS, AND
DECLARING AN EMERGENCY**

WHEREAS, under Section 4929.26, Ohio Revised Code, the City of Bay Village, Ohio (the "City") is authorized to establish an opt-out natural gas aggregation program for the benefit of natural gas consumers located within the incorporated areas of the City;

WHEREAS, under Section 4929.26, Ohio Revised Code, the City may exercise such authority jointly with other political subdivisions in the State of Ohio;

WHEREAS, governmental aggregation provides an opportunity for natural gas consumers collectively to participate in the potential benefits of natural gas deregulation through lower gas rates which they would not otherwise be able to have individually;

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Bay Village, Ohio:

SECTION 1. This City Council finds and determines that it is in the best interest of the City/Village and certain natural gas consumers located within the incorporated areas of the City to establish an opt-out natural gas aggregation program (the "Gas Aggregation Program"). Provided that this Ordinance and the Gas Aggregation Program is approved by the electors of the City pursuant to Section 2 of this Ordinance, the City is hereby authorized to aggregate, in accordance with Section 4929.26, Ohio Revised Code, the retail natural gas loads located within the incorporated areas of the City. For the Gas Aggregation Program, the City may enter into service agreements to facilitate the sale and purchase of service for retail natural gas loads. The City may exercise such authority jointly with any other political subdivision of the State of Ohio and through the Northeast Ohio Public Energy Council ("NOPEC"), a political subdivision of the State of Ohio, to the full extent permitted by law, and for such purpose, any City officers are hereby authorized to execute and deliver a program agreement with NOPEC in order to establish the Gas Aggregation Program through NOPEC. The Gas Aggregation Program does not apply to persons meeting any of the following criteria, as more specifically described in Section 4929.26(A)(2): (i) the person is both a distribution service customer and a mercantile customer, (ii) the person has an existing commodity sales service contract with a retail natural gas supplier, (iii) the person has commodity sales service as part of a retail natural gas aggregation pursuant to rules and orders of the Public Utilities Commission of Ohio, or (iv) such other persons that are not eligible customers pursuant to rules and orders of the Public Utilities Commission of Ohio.

SECTION 2. The Board of Elections of Cuyahoga County is hereby directed to submit the following question to the electors of the City at the primary election on May 5, 2015.

Shall the City of Bay Village have the authority to aggregate the retail natural gas loads located within the incorporated areas of the City and enter into service agreements for the sale and purchase of natural gas, such aggregation to occur automatically except where any person elects to opt out?

APPROVED:

MAYOR

12-12-14 II

The Clerk of this Council is instructed to file a certified copy of this Ordinance and the proposed form of the ballot question with the Cuyahoga County Board of Elections not later than February 4, 2015, which is ninety (90) days prior to May 5, 2015. The Gas Aggregation Program shall not take effect unless approved by a majority of the electors voting upon the proposed ballot question at the election held pursuant to this Section 2 and Section 4929.26, Ohio Revised Code.

SECTION 3. Upon the approval of a majority of the electors voting at the general election provided for in Section 2 of this Ordinance, this Council individually or jointly through NOPEC, shall develop a plan of operation and governance for the Gas Aggregation Program. Before adopting such plan, this Council or NOPEC on behalf of this Council shall hold at least two public hearings on the plan. Before the first hearing, notice of the hearings shall be published once a week for two consecutive weeks in a newspaper of general circulation in the City. The notice shall summarize the plan and state the date, time, and location of each hearing. No plan adopted by this Council or NOPEC on behalf of this Council shall aggregate any retail natural gas customer in the City unless it in advance clearly discloses to the person whose retail natural gas is to be so aggregated that the person will be enrolled automatically in the Gas Aggregation Program and will remain so enrolled unless the person affirmatively elects by a stated procedure not to be so enrolled. The disclosure shall state prominently the rates, charges, and other terms and conditions of enrollment. The stated procedure shall allow any person enrolled in the Gas Aggregation Program the opportunity to opt out of the program every two years, without paying a switching fee. Any such person that opts out of the Gas Aggregation Program pursuant to the stated procedure shall default to the natural gas company providing distribution service for the person's retail natural gas load, until the person chooses an alternative supplier.

SECTION 4. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 5. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of the City, and for the further reason that this Ordinance is required to be immediately effective in order for the City to file a certified copy of this Ordinance and the proposed form of the ballot question with the Cuyahoga County Board of Elections not later than February 4, 2015, as provided herein; wherefore, this Ordinance shall be in full force and effect immediately upon its adoption and approval by the Mayor of the City.

PASSED:

PRESIDENT OF COUNCIL

CLERK OF COUNCIL