

City of Bay Village

Council Minutes, Committee Session
Conference Room
Paul Koomar, President of Council, Presiding

March 16, 2015
7:30 p.m.

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

Also Present: Law Director Ebert, Finance Director Mahoney, Police Chief Spaetzel, Fire Chief Lyons, Safety/Service Director Thomas, Recreation Director Enovitch, Director of Community Services Selig, Director of Operations Landers, Chief Building Official Cheatham.

AUDIENCE

The following individuals signed in this evening: Russell Thompson, Jerrie Barnett, Richard Fink, Bob Tuneberg, Jeff Gallatin, Tara Wendell.

ANNOUNCEMENTS

Mayor Sutherland stated that information has been posted on the City of Bay Village website concerning the opportunity to opt-out of delivery of those large telephone books that are causing damage to snow blowers when left on the sidewalks. An email blast will be sent out on March 17, 2015 with the information as well.

Mr. Koomar noted that the City of North Olmsted has ordinances prohibiting the leaving of these publications on the sidewalk. Mr. Vincent stated that Westlake has an ordinance pending that also includes newspapers.

ENVIRONMENT, SAFETY AND COMMUNITY SERVICES COMMITTEE

Bay Family Services – Professional Services Agreement Renewal with McKeon Education Group, Inc. and Bay Village City School District

Mr. Lee advised that he will present an ordinance this evening for the annual renewal of the professional services agreement with McKeon Education Group, Inc. for the services provided to the community by Bay Family Services. Funding for the renewal is included in the 2015 City Budget. Mr. Lee noted that this contract is done on a school year basis.

Police Chief Spaetzel commented that Bay Family Services continues to be an extremely valuable program for both the City and the schools. They provide a variety of services from individual counselling to group exercises. There is a \$2,200 increase in the contract price this year.

Mr. Koomar noted that in addition to providing counselling for adolescents and adults in the community, Bay Family Services is part of the Community Diversion Program. Mr. Spaetzel stated that they do run the Community Diversion Program, and in addition to referrals by the Police Department they receive self-referrals.

Mr. Vincent asked if this is the same contract at every annual renewal. Mr. Koomar stated that he is the Council representative. The Police Department, St. Raphael's School, Bay Middle School and the High School are also represented. McKeon Education Services attends every School Board meeting as well. As the dynamics change in the community, they adjust and respond accordingly.

The ordinance will be presented for adoption at the Regular Meeting of Council this evening.

PUBLIC IMPROVEMENTS, STREETS/SEWERS/DRAINAGE COMMITTEE

Codified Ordinance Chapter 916 (new) – Foundation Drain Disconnection

Mr. Tadych advised that Codified Ordinance Chapter 916 has been designed to keep clean water out of the sanitary sewers because that is the water that is billed for treatment when it runs into the Rocky River Wastewater Treatment Plant. The chapter is self-explanatory, asking people in certain areas of the City, as the City goes through and checks those areas, to disconnect if their sewers are not connected properly. It also has a Payment Option Program outlined in Section 916.06, which allows residents to borrow up to \$2,000, interest free, to assist with disconnection costs, and pay it back in a year. If it is not paid back within that one year's time, the amount is certified to the County Fiscal Officer to be placed on their tax duplicate.

The Public Improvements, Streets, Sewers and Drainage Committee, comprised of Mr. Tadych as Chairman, Mr. Henderson and Mr. Lee, have thoroughly reviewed the proposed ordinance with Director of Public Service Scott Thomas and Consulting Engineer Bob Greytak. Mr. Tadych received one call regarding the possibility of a definition for Indirect Foundation Connections. The ordinance will be read at three Council meetings and Mr. Tadych would like it to begin at the next Council meeting.

Mr. Koomar asked Finance Director Mahoney if the loan program is manageable through the City. Mrs. Mahoney stated that it is manageable, but it is not really a loan because the City cannot be a creditor. The function is the same as that of the Sidewalk Replacement Program; if the funds are not repaid they are certified to the County for tax collection with the property tax bill.

Mr. Tadych asked if an account is necessary with funds in it to help the applicants. Mrs. Mahoney stated that Fund 245 was established in 2014, known as the Private Property Maintenance Fund. This is the account that will be used for funding related to Chapter 916.

Mr. Lee added that the new ordinance Chapter 916 institutes a \$50.00 per month non-compliance fee if the homeowner does not correct a connection that is in violation of the code. The homeowner has one year to make the corrections before the fee begins. As drafted, the

ordinance is intended to apply initially to District 11, in accordance with a map attached, which is the Bruce/Russell/Douglas and Lake Road area. Service Director Thomas will identify the next district and the plan is to roll out the program city-wide eventually. District 11 will be the first neighborhood to which the ordinance will be applied.

Mr. Tadych advised that there is not a map attached to the ordinance before Council this evening, but a map will be attached of the District to which it applies each time it is passed. The ordinance will be passed again for each of the 18 Districts.

Mayor Sutherland noted that District 11 was not chosen arbitrarily. It was chosen because of the Environmental Protection Agency Findings and Orders for overflows. We have had four, but they are now down to two. They are both in District 11.

Mr. Tadych noted minor changes of typographical errors in the ordinance: The letter "P" in "Program" in Section 916.10 is bolded, the letter "T" in the word "The" is bolded in 916.12, and in 916.15 the word "Program" has a bolded "P."

Mr. Henderson commented that one of his concerns initially with the ordinance was that although it is not a loan program, the City was putting itself at potential financial risk. But as this was considered throughout the subcommittee, a couple of changes were made that helped mitigate that risk. One is we are not extending this as a lump amount with the expectation of a lump amount back one year later. We changed it to twelve equal installments. We thought this would better match the cash flows of the people who might likely need the program and insure that we get the money back. Secondly, we put in a requirement that if anyone was delinquent on their property tax bill or sewer fees, they would not be eligible for the program. Again, this is an eye toward credit risk.

Mr. Lee noted that the committee added the requirement that the participants be approved by both the Director of Public Service and the Finance Director.

Mr. Koomar commented that he attended the first committee meeting when this ordinance was reviewed. Mr. Thomas reported that he had spoken with a number of different contractors that do this type of work. Service Director Scott elaborated that he interviewed two different contractors and priced a two sump pump system that would include a drain clean-out. The secondary sump pump would include a drain for the back yard. If there is an overflow on the first sump pump, the second sump pump will activate and not allow water to get back into the homeowner's house. The cost for this system is \$1,500.

Mr. Vincent asked if the Consulting Engineer has an estimate of the impact on the Rocky River Wastewater Treatment Plant after the entire City is corrected. Mr. Thomas stated that Consulting Engineer Greytak had estimated that approximately 70% of what is being treated at the Rocky River Treatment Plant is clear water. A study of downspouts in 2012 found that 32 and ½ percent came from downspouts. We knew there was a higher contribution into the clear water source, and we knew by checking these homes we were looking at almost 8% of water that was going into our sanitary system was actually being contributed through the foundation drains.

After one year, flow monitoring will be done in the area to see how successful the program is in each district.

The ordinance enacting new Chapter 916 will be placed on first reading at the next meeting of Council. Mr. Koomar noted that he would like spacing in between the Council meetings rather than three successive weeks. Mr. Thomas is looking to implement the ordinance at the end of April. There is time to be sure that the ordinance is out in the public eye for additional comments. Mr. Tadych noted that the Committee pushed to get the ordinance completed as quickly as possible.

FINANCE & CLAIMS COMMITTEE

Transfer from Infrastructure Improvement Fund to Sidewalk Replacement Fund

Mr. Clark commented that the Finance and Claims Committee discussed the advance made from the Infrastructure Improvement Fund to the Sidewalk Replacement Fund in 2012. In discussing this with Finance Director Mahoney, it is felt appropriate to categorize this advance as a transfer. A resolution of Council will be presented this evening for adoption.

PLANNING, ZONING & PUBLIC GROUNDS & BUILDINGS COMMITTEE

Amendment to Codified Ordinance 1305.02 (k) Housing License (Increase from \$75.00 to \$100.00)

Mrs. Lieske reported that this ordinance has been amended to increase the Rental Housing License from \$75.00 to \$100.00, and will be presented this evening for adoption.

RECREATION & PARK IMPROVEMENT COMMITTEE

Water Slide and Diving Tower Restoration Project

Mr. Henderson will present a motion at this evening's Regular Council meeting to advertise for bids for the Water Slide and Diving Tower Restoration Project. Recreation Director Enovitch advised that this project will include the repainting and the restoration of the stairs leading up and down the water slide tower and the diving well. It is the second phase of the Water Slide Restoration Project done last year. Fiberglass coating of the slide was done last year. This year the structure that supports the slide is being painted. The work will be done prior to the pool opening this summer. Mr. Clark commented that the project is supported by funds that exist in the pool fund. The pool is now in its 14th season.

SERVICES, UTILITIES & EQUIPMENT COMMITTEE

Mr. Vincent had no report this evening.

MISCELLANEOUS

Mayor Sutherland advised that she will be introducing two ordinances this evening at the Regular Meeting of Council.

Mr. Koomar addressed Law Director Ebert stating that there were questions because when Mr. Koomar polled Council last week there were enough open items in terms of the agreement and litigation in Westlake with Cleveland, where that stands, and a lot of items that had been talked about over the last couple of weeks, not to move forward. As Council President, Mr. Koomar took that lead and did not put that on the agenda.

Mr. Ebert stated that the Charter of the City of Bay Village allows the Mayor, under Charter Section 3.5, to introduce legislation, in the form of ordinances and resolutions, and take part in discussions before Council. Mr. Koomar stated that he agrees, he thinks all of Council agrees. There is a clarification about setting the agenda so that it has proper notification to the public versus actually introducing an ordinance. After Mr. Koomar and Mr. Ebert talked today, Mr. Ebert gave Mr. Koomar an opinion that the Charter was silent to that, so Mr. Ebert is leaning towards saying let's go ahead and allow this to occur. Mr. Koomar then received a couple of phone calls from Council members asking him about the notification. If there is not proper notification, how do you work around that; it is unsure that you can work around it.

Mr. Ebert stated that the action by Council has to be communicated to Council 24 hours in advance. That was done by the Mayor through an email sent out on Friday, March 13. The Procedure to request Action of Council under Section 111.09 and 111.10, Procedure for Introducing Legislation is 24 hours in advance. It is not on the agenda which then becomes an issue with the 48 hours as far as the public becoming aware of it. The Charter provides that the Council President, with the Clerk of Council shall put the agenda together in advance of a Council meeting. There is also Section 111.12, Order of Precedence for Motions and Resolutions indicating that when a Resolution or Ordinance, or Motion before Council or under debate, once it is introduced, can take various action, listed as (a) through (g):

- (a) To adjourn
- (b) To lay on the table
- (c) For the previous question
- (d) To postpone to a certain day
- (e) To return to committee
- (f) To amend
- (g) To postpone indefinitely.

The issue concerning notification to Council- that was given well in advance on Friday, March 13, 2015. Mayor Sutherland stated that she also notified the media. Mr. Ebert stated that the Charter is silent as far as the preparation of the agenda. It does say that the President of Council, with the assistance of the Clerk of Council, shall prepare the agenda. The proper place for the Mayor to introduce the legislation would be under the miscellaneous portion of the Council agenda. It is then up to Council whether they move to take a vote on it or move to table, send to committee, or postpone, etc.

Mr. Vincent asked where the ordinances must be posted to comply with the Sunshine Law. Mr. Ebert stated that the posting is the website, the lobby of City Hall, and the library. Mr. Koomar asked if the ordinances were posted in any of those places. The ordinances were not posted.

Mr. Vincent asked how many times, or if this has ever been done before. The Mayor stated that it has never been done before. Mr. Ebert stated it has not been done during his time with the City which began in 1981.

Mr. Koomar asked Mr. Ebert if the ordinances have to be posted in those three public places. Mr. Koomar addressed Mr. Ebert, stating that as they discussed today this is a long-term issue for Mr. Koomar. Mr. Koomar stated that there is a reason there is a division of powers in government and he just wants to be clear on this. Mr. Ebert stated that the Charter is silent because theoretically you could say under Chapter 3.5 the Mayor can introduce any legislation. But, if the agenda is prepared by the Council President and the Council President says he is not putting it on the agenda it will never get on the agenda. That's why the Mayor sent copies and also sent it to the media. There is no way, theoretically, for a Mayor to get it on the agenda if Council doesn't put it on. The Charter says she can introduce. The only way to introduce legislation is to have it in the kits, post it, and introduce it. Whether Council votes on it; that is spelled out in the administrative code. You don't have to vote on it. You can postpone it, you can adjourn or you can send it to committee, under the procedure outlined in (a) through (g). There is a procedure if Council wants to table it until next week, to postpone it to a certain date, to postpone it indefinitely, whatever they want to do. That is the answer based on the code. You can go to Roberts Rules of Order; you can go to the state code as far as that is concerned. From that standpoint, if the Mayor has the authority under the Charter to introduce an ordinance, she has the ability to actually present it at the Council meeting.

Mr. Koomar asked Mr. Ebert if anybody could present an ordinance at any time without notifying the media. Mr. Ebert stated that there is a procedure for residents, stating:

111.09 PROCEDURE FOR REQUESTS FOR ACTION BY COUNCIL.

Any request by anyone other than the Mayor or a member of Council calling for final action by Council at a designated meeting shall be communicated to the President of Council not later than 8 p.m. of the fourth day preceding such Council meeting, which request shall outline the factual basis for and the nature of the Council action sought. The President of Council shall promptly refer such request to the proper committee for study and recommendation. If any such request is made after such time, the President shall refer the request to the proper committee for report and recommendation not later than the next subsequent Council meeting.

(Ord. 57-40. Passed 4-5-57.)

Mr. Ebert stated that the Mayor could say she is a resident of Bay Village, thereby asking Council. By doing that the Mayor could ask that this be placed on the next Council meeting.

Mr. Tadych asked if that would be the next Regular Council meeting. Mr. Ebert stated that it states that it would be the next "subsequent Council meeting."

Mr. Ebert stated that his opinion is that there is enough here to follow Section 111.09, or 111.12 to either take action, or not take action.

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Mr. Vincent noted that with the requirements of the Sunshine Clause, hypothetically Council could not pass the legislation. There wouldn't have been enough formal notice. Mr. Ebert stated that you are getting into the situation of what is proper notice. That's the issue. That is what is silent.

There being no further discussion, the meeting adjourned at 7:55 p.m.

Paul Koomar, President of Council

Joan Kemper, Clerk of Council