

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, JULY 21, 2014 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 TEN MILE ROAD**

Mayor Gatt called the meeting to order at 7:00 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Gatt, Mayor Pro Tem Staudt, Council Members Casey, Fischer, Markham, Mutch, Wrobel

ALSO PRESENT: Victor Cardenas, Interim City Manager
Thomas Schultz, City Attorney

APPROVAL OF AGENDA:

CM 14-07-117 Moved by Wrobel, seconded by Casey; **CARRIED UNANIMOUSLY:**

To approve the Agenda as amended. Item 1 was removed from this agenda by Mayor Gatt and postponed.

Roll call vote on CM 14-07-117

Yeas: Staudt, Casey, Fischer, Markham,
Mutch, Wrobel, Gatt
Nays: None

PUBLIC HEARING – None

PRESENTATIONS – None

REPORTS:

1. MANAGER/STAFF – None
2. ATTORNEY – None

AUDIENCE COMMENT: None

CONSENT AGENDA REMOVALS AND APPROVALS:

CM 14-07-118 Moved by Casey, seconded by Wrobel; **CARRIED UNANIMOUSLY:**

To approve the Consent Agenda as presented.

- A. Approve Minutes of:
 1. July 7, 2014 – Special meeting
 2. July 7, 2014 – Regular meeting

- B. Enter Executive Session immediately following the regular meeting of July 21, 2014 in the Council Annex for the purpose of discussing Interim City Manager and City Clerk performance evaluations and privileged correspondence from legal counsel.
- C. Approval to purchase one (1) 2015 GMC Sierra Crew Cab vehicle from Red Holman Buick GMC, Westland, MI for the Novi Fire Department in the amount of \$46,278 through the Oakland County cooperative purchasing contact.
- D. Approval of the "Novi Dog Park Rules 2014" governing use of and conduct in the City's dog park.
- E. Approval of an ordinance 14-113.05 to amend the City of Novi Code of Ordinances, at Chapter 25, Parks and Recreation, in order to revise existing regulations relating to the leash requirement for dogs to create an exception for the City's dog park and to provide for the adoption of rules governing conduct in the dog park – **SECOND READING**.
- F. Approval of a request from Theodore S. Andris, P.C. for a variance from Section 11.256(b) of the Novi City Code for the lack of a bicycle pathway along the frontage of East Lake Drive as part of the Sundance Grill and Cantina site plan (parcel 22-02-126-001).
- G. Approval of Resolution authorizing cost participation, and approval of a cost share agreement with the Michigan Department of Transportation for the construction of a right turn lane for southbound Haggerty Road at Grand River Avenue and associated intersection improvements under a federal Surface Transportation Program grant in the amount of \$138,900, of which the City of Novi share will be \$13,900.
- H. Approval of Resolution authorizing cost participation, and approval of a cost share agreement with Michigan Department of Transportation for the construction of a right turn lane extension for westbound Grand River Avenue at Beck Road under a Congestion Mitigation and Air Quality grant in the amount of \$139,300, of which the City of Novi share will be \$25,300.
- I. Approval to award an amendment to the engineering services agreement with URS Corporation for construction engineering services for Heslip Drive Rehabilitation in the amount of \$30,878.
- J. Approval of a request from Mirage Development, LLC for a variance from the following ordinance sections: 1) Subdivision Ordinance Section 4.05(A) requiring that pedestrian safety paths be constructed along both sides of local streets (a sidewalk on only the north side is proposed), 2) Section 11-94(c) to provide less than three feet of cover for storm sewer pipe, 3) Section 11-194(a)(7) for exceeding the 800-foot maximum length of a cul-de-sac (975 feet is proposed), and 4) Section 11-194(a)(19) for the lack of a secondary or emergency access;

as part of the site plan for Orchard Hills North single family residential development (parcel 22-26-201-006).

- K. Approval to award bid for soccer uniforms to Challenger Teamwear for one year based on unit pricing, with an estimated annual cost of \$15,000.
- L. Approval of Claims and Accounts – Warrant No. 920

Roll call vote on CM 14-07-118

Yeas: Casey, Fischer, Markham, Mutch,
Wrobel, Gatt, Staudt
Nays: None

MATTERS FOR COUNCIL ACTION

1. Consideration of a request from CZ Cartage, Inc. for a variance from Section 11-239(b) of the Design and Construction Standards of the City Code, which requires parking areas and maneuvering lanes to be hard-surfaced and curbed, to allow the applicant to construct a parking area that is gravel surfaced on parcel number 22-17-101-006. **REMOVED AND POSTPONED**
2. Consideration to approve "Resolution Authorizing Submission of Charter Amendment Ballot Proposals to Electors," submitting two (2) ballot proposals to update, modernize, and streamline City of Novi Charter to the voters at the November 4, 2014 general election, pursuant to recommendation from the *Ad Hoc* Charter Review Committee.

Interim City Manager Cardenas explained that the Charter Review Committee has been meeting for over a year now at the direction of City Council. They have brought forward two items for consideration to be placed on the November 4, 2014 ballot.

Three members of the Charter Review Committee were present to speak on the two proposed charter amendments: Doreen Poupard, Fil Superfisky and Tom Marcus. Ms. Poupard spoke in favor of the resolution to place two charter amendments on the November 4, 2014 ballot as recommended by the Charter Review Committee. She explained that the wording of the charter amendments have been approved by the Attorney General and reflect the discussion of the Committee. It is the opinion of the Committee that both of the recommended revisions will benefit citizens in the City of Novi and refine governance operations within the Council. The first recommendation refers to Section 9.16 of the Charter relating to the collection of fees for delinquent taxes. It is the Committee's opinion that this revision would benefit citizens and small businesses in our community. The Committee reviewed past situations in which there had been penalties due to missing the deadline to pay taxes. The Committee believes that providing an additional two week window is fair, equitable and responsible and reflects the City's service orientation to its citizens. She urged the Council to place the question on the November 4, 2014 ballot for the citizens to decide.

Ms. Poupard explained that the second proposed charter amendment refers to Sections 7.6 and 8.6. This recommendation addresses language for a supermajority requirement for Council actions relating to appropriating money and budget control and amendments. The recommendation would change the requirement from a supermajority of Council member votes required to pass money or budget control and amendment actions to a simple majority, as is the practice of other Michigan municipalities. The research showed that it was highly unusual for cities similar to Novi to require a supermajority vote. The discussion of the Committee also covered the unanticipated consequences that forestalled Council deliberations due to the Charter's supermajority requirement. She thanked Council for their consideration.

Mayor Gatt thanked the three Committee members for their involvement and participation on the Committee.

Mayor Pro Tem Staudt said he could easily support the first proposed charter amendment regarding an automatic fee without any regard to circumstances. He said he had to go against the recommendation of the Charter Review Committee on the second proposed amendment. He has been on City Council for seven years and has gone through seven budgets. The voters expect at least five of the members of Council to figure out and work out budget matters. He feels it is critical that five Council members can get together and agree. He said in his time, he hasn't had any issues with the supermajority being an issue. In the future, there might be different situations, but he felt the voters expect Council to come together and get five votes at minimum to agree on something as important as the budget. He restated that he would support the first proposed amendment, but could not support the second proposed amendment.

Member Wrobel said he respected Mayor Pro Tem's comments, but felt the issues should be placed before the citizens for them to decide. He said he would support both items being placed on the ballot.

CM 14-07-119 Moved by Wrobel, seconded by Casey; *LATER WITHDRAWN:

To approve the "Resolution Authorizing Submission of Charter Amendment Ballot Proposals to Electors," submitting two (2) ballot proposals to update, modernize, and streamline City of Novi Charter to the voters at the November 4, 2014 general election, pursuant to recommendation from the Ad Hoc Charter Review Committee.

Member Mutch said he could not support the motion as presented because he felt the same way as Mayor Pro Tem Staudt about the two topics. He has been on Council for easy budget approvals and was also on Council back when Council was split four votes to three votes on a budget and they had to figure out how to come to a consensus of five members. He said in the history of the City, Council has always been able to eventually come to a consensus with five votes. He said Mayor Pro Tem Staudt hit a key point, which was that residents expect City Council members to figure out how to work

together and come to a consensus. He added that the way our government is structured, it is broken into three core principles. We have a Council-Manager form of government, we have charter millages that are capped, and we have the five vote supermajority for the budget. He said it may be unique, but if you look at the City's financial performance over the history of the City of Novi, it's worked. He said the City of Novi is in a good financial position right now due in some part to the supermajority requirement. He said he could not support the motion as stated. He would support the first proposed amendment, but could not support the second proposed amendment.

Member Fischer echoed the comments of Mayor Pro Tem Staudt and Member Mutch. He said he had some concern about putting two different proposals on the November 4th ballot. He said there is an issue on the August 5th ballot currently and they don't know how that one will turn out. Then they are looking to put two more on the November ballot and he felt that could cause some confusion to the voters. He said changing the Charter should be a very deliberate process and he would prefer to slow it down. He said he was hesitant to vote on either of them, but added he could support placing the first proposed amendment on the November 4th ballot if that's what the majority of Council wanted to do. He said the supermajority item is an odd position to be in because sometimes he also felt it would be easier to have a simple majority. He didn't think it would be a smart long-term decision for the City. He added that if City Council didn't meet the deadline to approve the budget, it wasn't the process or the Charter that was flawed; it was the Council that couldn't come to a compromise for the best interest of the City. As the motion sits, he said he would vote no.

Member Markham said one of her concerns was the trickling out of these charter amendments and felt it was confusing to the voters. She said the supermajority question raises the question about trying to push through items with more ease. There is an expectation that Council will work together. She said she was actually concerned about the first proposed amendment. She questioned how big of a problem it was that people are missing the tax deadlines. Her concern was whether they were creating a bureaucracy that's not necessary and are we also setting up a situation where in the future we have people waiting until the second deadline and creating the same issue. She wasn't sure she understood the logic of going forward with it. She then added in general, she would like to see the charter amendments on local election ballots. She said she would not support the supermajority proposed charter amendment and would like to understand more about the tax deadline and penalty question. Mr. Cardenas explained that the penalty is currently set at 4% automatically after the due date. There have been some instances where some large commercial businesses hit some glitch in getting their payment in on time and have to pay it a day or two late, which resulted in a significantly large late fee penalty. He said in terms of residential owners, there may be issues with computerized bill payment and verification of payment. He said the philosophy behind this was that other communities have a staged penalty system. Member Markham said that actually made her think that we would be letting people and companies not pay their taxes on time and she didn't support that. Overall, she would not support the motion.

Mayor Gatt said he wholeheartedly supports both of the proposals. He said the task of the Charter Review Committee was to identify items within the Charter that needed updating. There was a lot of discussion and 19 items were identified. He said if they were to only place amendments on the local election ballots, they would only have the opportunity every two years and it would take a long time to address the issues the Committee identified. He said the Committee chose to try and place amendments on every ballot possible to get through them. He recognized they made a mistake by placing five items on the ballot the first time around. He said he didn't have a problem with the way or timing in which they were placing amendments on ballots. He added that the Committee came to the decision to let the voters decide on those two proposed amendments and it's up to Council whether they let the voters have that chance.

Member Wrobel withdrew his motion for the purpose of separating the issues to be voted on individually. Member Casey agreed as she was the original supporter of the motion.

Ms. Poupard said there was a lot of discussion within the Committee regarding the supermajority and much of that was in line with what was just discussed. As they continued in the discussion, they determined it was an opportunity for the citizens to have the chance to say whether they believe there is a need for the supermajority or not. Their recommendation is that the question goes to the voters and if the voters say no, then it would affirm what the Council has just discussed. She said the Committee wasn't necessarily saying that it should be changed, just that the voters deserve the opportunity to decide.

Member Casey echoed the Mayor's comments and Ms. Poupard's. The intent of the Charter Review Committee is not to make the decisions for the residents, but to identify issues and outdated processes in the Charter and ask the voters for them to decide. She said the supermajority item is a very restrictive process to have, whether you are for or against it. It was written at a time when there was less transparency. She said the Committee was questioning whether the voters still value the five member supermajority. The question at hand is not whether the Council members like it; it's whether they feel the voters have the right to decide for themselves.

CM 14-07-120 Moved by Wrobel, seconded by Staudt; CARRIED 5-2:

To approve the Resolution Authorizing Submission of Charter Amendment Ballot Proposal one as stated in the packet, to update, modernize, and streamline City of Novi Charter to the voters at the November 4, 2014 general election, pursuant to recommendation from the Ad Hoc Charter Review Committee.

Mayor Pro Tem Staudt said it was a very long process to review the Charter and to keep the Committee together for multiple years. He said it was important for the Committee to see the results of its efforts and he has no problem bringing charter amendments to the voters at every election possible. He feels very strongly though that the

supermajority item is not one of the issues that needs correcting. He appreciates the voters having the opportunity to weigh in, but on the other hand, he's been through budgets and the supermajority requires the Council to compromise. Based on his experience, he felt it was a valuable rule to maintain in the Charter. He said regarding the tax penalty, he did not like setting fees within the Charter because those fees should fluctuate on current standards and different Councils. He supports the motion but would rather see them have the ability to set those types of fees through ordinances.

Member Wrobel asked Mr. Schultz to touch on Member Markham's question from earlier regarding the process we have to go through to place an item on the ballot. Mr. Schultz explained the Committee comes up with a topic that might need to be addressed and the attorney then words a possible amendment based on the discussions. The Attorney General's Office then does an informal review of the potential charter amendment language. The Council is then required to pass a resolution if they are in favor of the question being placed on a ballot. The Attorney General's Office and the Governor's Office then makes a final decision. The timeframe is generally several weeks long.

Member Mutch asked the attorney if the collection fee is assessed against a delinquent property tax but is separate from interest and penalties that the City also assesses. Mr. Schultz confirmed that was correct and added that the Committee felt the 4% immediate penalty is a little bit high as the initial penalty. This was a compromise within the Committee to grant a small break to become more in line with other communities that have staggered penalties instead of the large 4% right away. Member Mutch asked if the collection fee was authorized by state law and Mr. Schultz said yes, it was a permissible fee. Member Mutch then questioned if this was not a requirement under state law, were there other municipalities that don't levy a fee. Mr. Schultz said he wasn't aware of any that do not have a penalty fee. Member Mutch said that in addition to this collection fee that will max out at 4%, people who don't pay their taxes will face additional interest and may eventually face tax foreclosure. He asked if we were required to have this fee scoped out in the Charter, or if it could be done through an ordinance so that it could more easily be adjusted over time. Mr. Schultz said he would have to look into that, but did not think he had seen a Charter that had the tax penalties outlined in an ordinance. Member Mutch was initially willing to support the motion, but he now questioned whether the Charter was the appropriate place for the penalty to be defined. He was not ready to support moving forward with the motion. He said the focus of the Committee was to streamline and modernize the Charter. He said the supermajority topic was a political question about how the City government functions as a political body.

Member Fischer asked the attorney who had the authority to waive the 4% penalty as the Charter currently exists. Mr. Schultz said no one had the authority to waive that fee. Member Fischer said that was exactly why he felt this was a reasonable change to make in the Charter. He wanted to add that he felt the Charter was the appropriate location for this type of fee to be set. He said he would support this motion. He added that he appreciated all the time the Committee has spent on this.

Mayor Gatt said the Charter Review Committee took on a monumental task. He agreed with some of the speakers that they shouldn't be bringing questions to the table that would change the way the government operates. He added that originally when the Charter was created, they did bring those types of questions to the voters. He said there may be people out there who want that change. Their task was to review the whole Charter and recommend changes to the City Council and that is what they have been doing. He said there may be additional questions in the future that may be debatable, but that is exactly what the point is.

Roll call vote on CM 14-07-120 **Yeas: Fischer, Wrobel, Gatt, Staudt, Casey**
Nays: Markham, Mutch

CM 14-07-121 **Moved by Wrobel, seconded by Gatt; FAILED 3-4:**

To approve the Resolution Authorizing Submission of Charter Amendment Ballot Proposal to electors submitting the change to Section 7.6 eliminating the supermajority requirement, to update, modernize, and streamline City of Novi Charter to the voters at the November 4, 2014 general election, pursuant to recommendation from the Ad Hoc Charter Review Committee.

Member Mutch doesn't want the members of the Charter Review Committee to view this as him not wanting them to look at particular issues. He is open to discussion and wants the Committee to be cognizant of items that require more discussion and review time than others.

Mayor Pro Tem Staudt stated the important part was that they get the opportunity to weigh in on the potential charter amendments. There are still some things he would like to see done. He said they should continue the process.

Member Markham appreciated the efforts of the Committee and wants to see the process continue. She said it was not clear how the Committee was prioritizing the items and why they are coming in the order they are.

Mayor Gatt said the Charter Review Committee will continue to meet and bring forth issues.

Roll call vote on CM 14-07-121 **Yeas: Wrobel, Gatt, Casey**
Nays: Markham, Mutch, Staudt, Fischer

3. Approval to award a construction contract for Heslip Drive Rehabilitation to Goretski Construction, the low bidder, in the amount of \$270,510.

Mr. Cardenas said that Heslip Drive has been in need of repair for quite some time.

CM 14-07-122 Moved by Staudt, seconded by Wrobel; CARRIED UNANIMOUSLY:

To approve the award a construction contract for Heslip Drive Rehabilitation to Goretski Construction, the low bidder, in the amount of \$270,510.

**Roll call vote on CM 14-07-122 Yeas: Mutch, Wrobel, Gatt, Staudt, Casey, Fischer, Markham
Nays: None**

4. Consideration of Ordinance No. 14-171.02, Chapter 2, Article VII, Section 2-210, and associated resolution, to amend the procedure for administering payments made for review of legal documents submitted for private or individual benefit.
FIRST READING

Mr. Cardenas said the City has had an ordinance in place for about ten years to offset the cost of the attorney fees for reviewing documents for new developments. The fee and ordinance have been reviewed by appropriate departments and have come forth with proposed changes. It will mainly provide a better way to estimate the actual cost of legal review, provide for the release of funds if there is an excess of funds at the end of the project, and streamline the process in general. This went before the Ordinance Review Committee on July 7th and is now being presented to Council for consideration.

CM 14-07-123 Moved by Mutch, seconded by Wrobel; CARRIED UNANIMOUSLY:

To approve Ordinance No. 14-171.02, Chapter 2, Article VII, Section 2-210, and associated resolution, to amend the procedure for administering payments made for review of legal documents submitted for private or individual benefit. FIRST READING

**Roll call vote on CM 14-07-123 Yeas: Wrobel, Gatt, Staudt, Casey, Fischer, Markham, Mutch
Nays: None**

5. Approval of Ordinance Amendment 14-120.12 to amend the City of Novi Code of Ordinances, at Chapter 20, "Massage", Article I, "In General", and Article III, "Massage Therapist Permit", in order to remove the requirement for a city-issued individual Massage Therapist Permit as a result of state preemption of such requirement. **FIRST READING**

Mr. Cardenas explained that the State of Michigan has nullified the local municipalities' ability to require individual therapists to be permitted. The City retains the right to enforce Massage Business licensing requirements under our current ordinance. This was brought to the Ordinance Review Committee on July 7th and is now being presented to Council for consideration.

CM 14-07-124 Moved by Wrobel, seconded by Mutch; **CARRIED UNANIMOUSLY:**

To approve Ordinance Amendment 14-120.12 to amend the City of Novi Code of Ordinances, at Chapter 20, "Massage", Article I, "In General", and Article III, "Massage Therapist Permit", in order to remove the requirement for a city-issued individual Massage Therapist Permit as a result of state preemption of such requirement.
FIRST READING

Roll call vote on CM 14-07-124

Yeas: Gatt, Staudt, Casey, Fischer, Markham,
Mutch, Wrobel

Nays: None

AUDIENCE COMMENT: None

COMMITTEE REPORTS – None

MAYOR AND COUNCIL ISSUES - None

CONSENT AGENDA REMOVALS FOR COUNCIL ACTION – None

ADJOURNMENT – There being no further business to come before Council, the meeting was adjourned at 7:57 P.M.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Transcribed by Cortney Hanson

Date approved: August 11, 2014