

CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
SEPTEMBER 17, 2012, 7:00 P.M., COUNCIL CHAMBERS
www.burtonmi.gov

Bishop Bernadel Jefferson led the Invocation and Councilwoman Ellen Ellenburg led the Pledge of Allegiance.

The Regular Meeting was called to order by Councilman Vaughn Smith at 7:10 p.m.

MEMBERS PRESENT: Ellenburg, O'Keefe, Smith, Wells and Heffner.

MEMBERS ABSENT: Haskins and Martinbianco.

OTHERS PRESENT: Mayor P. Zelenko, Atty. R. Austin and J. Adams, City Clerk.

Heffner moved and Ellenburg seconded the following motion:

Approve and authorize the minutes of the Regular Council Meeting on September 4, 2012 at 7:00 p.m. Motion carried 4-0. (Wells was not present)

ADMINISTRATIVE REPORT:

Mayor Zelenko stated on the City's website is posted that City Council is seeking ZBA applicants for an alternate. So far we have received 2 letters of interest. The deadline is Friday September 28th by 4:00 p.m. We will furnish Council with all the letters and applications in time for the next Council Meeting on October 1st and have it placed on the agenda for approval of the appointment.

Mayor Zelenko thanked Council members who send her e-mails with constituent concerns. She said it helps with expediting the efficiency in getting problems resolved and sending it onto the appropriate department head. The Clerk has been extremely busy in preparation of the Presidential Election. The ballot is going to be exceptionally long this year and is 2 pages double sided. There has been an increase in absentee ballot requests and we expect it will be a big election.

Mayor Zelenko said DPW is currently working on the Dort Hwy. property cleaning it up and Saginaw Street. Motor Pool is doing winter maintenance on the road vehicles and road crews are doing ditching and road repairs. The water and sewer department is busy collecting information for the DWARF Loan, the drinking water revolving fund loan, and we are anticipating good results. We will meet again with DEQ and Dema from Stantec next week. Over the next few weeks we are preparing our citizens and residents for winter. We need to remind residents if they have a sidewalk in front of their home or business, they are responsible for making sure it is clear. We are working with the County to clear the City and County storm drains so they can flow properly and we are jetting the sanitary sewers as well so we don't have any blockages. The building side of our department is slowing down for the season, but the code side is still very busy. We are performing clean ups on the third Saturday of the month. Some of Council received inquiries as to why there were 4 DPW trucks at one residence. We formed teams to do cleanups quicker and it has been very effective. We handled 32 clean ups on one Saturday.

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Colette's antique place has an event coming up on October 6th and 7th. Our DPW is going to be part of a panel in giving away trophies. Terry Gabriel in our Water Department was recently awarded the Edward Dunbar Rich Service Award. This award is issued by the State of Michigan, Department of Environmental Quality Management Division. They recognize those that have served 25 years or more in maintaining safe, dependable and adequate water supply. Terry was highly recommended for this award.

COMMITTEE REPORTS:

Mrs. Ellenburg said the Library is still putting benches together. She thanks the DPW for taking down the fence and we are now ready to put in the new fence when Mr. Haskins puts it in place with the DPW. The Library's book sale is on October 25th and 27th. On September 21st books will be sorted and volunteers are needed to help with that. If anyone would like to come and help we would appreciate it. The Legislative Committee met earlier tonight at 6:30 p.m. to discuss the joyriding ordinance. It was recommended by Mr. O'Keefe to bring it forward to Council tonight. It is on the agenda for an Introduction of an Ordinance.

Mrs. Ellenburg stated she would like to schedule a Legislative Committee Meeting for October 1st at 6:00 p.m. to discuss a Scrap Metal Ordinance that the City of Flint has in place. On Friday, an article was in the Flint Journal on this. There will probably be a couple of meetings on this for discussion and to tweak it.

Mr. O'Keefe said he is the Council representative on the Genesee County 911 Consortium Committee. Their meeting was last Tuesday. The State Police post's location now belongs to 911. They also bought the Republic Bank next door and all the property. They have been working on it for 6-8 months and are now 99% completed. They leased back to the State Police to keep them there. That is part of their security contingent having a police department in their 911 facility. The City of Flint is not a member of the 911 Consortium but there has been a lot of discussion and they think something could be resolved in the very near future. Mr. O'Keefe stated further, all radios for police cars and fire trucks will have a band changed on them. It is very important that we get all our vehicles out there. They said if you didn't make that meeting, it would be your expense to go up to Saginaw taking all your cars and radios up there. Burton is all set, the Mayor and both Chiefs were right on this. Plante & Moran was at the 911 Consortium meeting and we approved the 2012-2013 budget. They have a small budget and it appears even with the acquisition of a new piece of property that they paid cash for last year and all the improvements, they are going to have a balanced budget without taking any money from any of their General Fund.

Mr. Wells said he would like to schedule a Public Access Committee Meeting for September 26th at 6:00 p.m. to discuss the City's website, Recycling and the Burton Historical Society. Mr. Wells read aloud a letter from a resident who expressed concerns with regards to the City's website, his water getting shut off and an emergency after hours phone number.

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Mrs. Ellenburg expressed that the letter should have been given first to the Mayor so she could address the concerns and not be blindsided by it.

Mr. Smith addressed some procedures that could have been in place to handle the concerns of the resident and contacting the Mayor.

Mr. Wells said he just got the letter before the meeting. The resident wanted the letter read because he could not attend the Council meeting.

Mr. Heffner said the Solid Waste Committee should address recycling and Parks & Recreation should handle the Burton Historical Society. He believes the Burton Historical Society was turned over to Mrs. Miron and Mr. Walls to look into it.

Mr. Wells indicated the Public Access Committee can still discuss these items and get some information and go from there.

Mr. Smith said the website has over 3,200 hits by people a month. I think it is phenomenal we have an access point now in getting information out. We can always do better; this is a work in progress. For Burton Project Heats On, the Mayor put on the website that you can get the application through a link with the Burton Chamber of Commerce website. That is giving 3,200 people a month an opportunity to seek help in the City. This is a good thing. It is not perfect, but we are reaching a lot of people with it.

AUDIENCE PARTICIPATION:

John Stapish, PO Box 190134, inquired regarding Items #2 and #3 on the agenda. He asked what union it represents, the unit of government and hourly wages. He feels a local lawyer should be used here. At the last meeting he asked about a car lot on Dort and Hemphill Rd. with cement and dirt mounds behind the property. It has been 2 weeks and nothing has been done. Cars are there now. Mr. Stapish spoke further regarding his experience on water shut offs with his properties and DPW's recycling of scrap metal.

John Klutts, 3104 S. Center Rd., said he is here to ask about a piece of property on Center Rd. He was told to bid on it. He is somewhat confused on procedures.

Mrs. Ellenburg expressed to Mr. Klutts to see her after the meeting on his questions and she will help him.

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COUNCIL DISCUSSION:

Mr. Wells thanked administration for taking care of the 2 lawns he brought up at the last meeting. There are more properties throughout the City and he will talk to the Mayor about it and provide her a list. Mr. Wells addressed further the resident's letter he read aloud. He said if a resident asks him to read something or to speak for them in a meeting that is what we get paid to do. There are some letters he receives that he told the person he would not read it and they would have to take it upon their selves to speak about it. This gentleman was a former DPW employee and Fire Chief and it speaks highly of him. He will take the heat for the website. It is something we started and kind of let it slip and slide. We were hoping to get feedback and we did receive some.

Mr. Smith said we have over 3,200 people visiting the website a month and you are going to have some complaints. You can't satisfy everyone 100% of the time, I don't think it is humanly possible. I view the website as money well spent. I see residents and the world using it all the time.

Mr. Wells said we are looking for insight and for someone to say I want to see this on there.

Mrs. Ellenburg addressed Mr. Wells letter he read. She said you got the e-mail from your phone and could have forwarded it to the Mayor in a click of a button so she could have been aware and gotten you an answer for you to respond to the man. You can forward it just as fast as you can e-mail or print out a copy. It just would have been a courteous thing to do. The resident could have also e-mailed to the Mayor or the department and they would have been able to answer him.

Mr. Wells said we want to hear about problems, that is what we are here for. Some things we can fix, some we can't. This is constructive criticism and to me it is always a good thing.

Mr. Heffner said he doesn't personally see this as constructive criticism. He sees the website as a work in progress; it is always evolving. Last year they had the number 4 I Phone, today the 5 came out. A couple of years ago, we didn't have e-mail addresses to send the concerns to the Councilperson to bring forward. Residents can now send us e-mails and bring it to our attention so we can bring it to the Council meeting and forward it on to the Mayor. What the website looks like today, next year it will be completely different. Eventually, we will get it worked out and the City will be better off for it.

Mrs. Ellenburg reminded everyone that on September 29th Parks & Recreation is sponsoring a casino night going to Soaring Eagle as a fundraiser. It is \$40.00, you get \$20.00 back, and a \$5.00 meal ticket.

In reference to Item #2, Mr. Smith addressed Mr. Stapish's questions regarding Item #2 and #3. He said the City's administration is in negotiations with the unions. Until we get through this, there will be more billings.

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Mr. Wells said he brought this up during Plante & Moran's contract, a few other contracts and the Dee Cramer / Goyette contract. Kellar Thoma has been doing this job for us for years. I think it is time we send it out to bid. I know they are one of the best, but we are still looking at ways to save money and keep them honest. As soon as we can get with administration, I say when this contract is up, we need to send out some bids. This isn't taking anything away from Kellar Thoma, but you still have to keep people honest.

In reference to the Introduction of an Ordinance, Mr. Wells inquired to Mr. Austin for a review of the information.

Mr. Austin stated this ordinance is an added tool to the Police Department. It will allow them to charge a joyriding situation as a misdemeanor. It will not eliminate the possibility of charging a joyriding situation as a felony; it will just give the Police Department the option of charging either as a felony or as a misdemeanor, as circumstances dictates. These joyriding situations are typically crimes of opportunity where young persons get in a vehicle that doesn't belong to them, keys are in the ignition and they drive it away, not intending to steal the vehicle, only intending to have a good time and they leave the car in a ditch. When these crimes are charged as a felony, the initial appearance or the initial step at a felony case is a preliminary examination held downtown at the McCree Court Building. Five or six preliminary examinations on 5 or 6 different felony cases are scheduled at the same time before the same Judge downtown. The Police Department has to have the arresting officer or officers many times, at the McCree Court Building ready to testify at the preliminary examination and most of the time those officers are appearing there on over time. We have to pay those officers to be there and they sit and wait and wait many times for a preliminary examination that never happens, or if it is scheduled at 8:30 a.m. it doesn't happen till noon; 99 times out of 100, these low grade felony joy riding cases are plea bargained down to a misdemeanor case, so they never get to a Circuit Court jury trial. We don't pay the officers to go to Circuit Court jury's because these cases are plea bargained down to the misdemeanor level that they would start at under this new ordinance

Mr. Austin explained further, this ordinance will provide when charged as a misdemeanor, a cost savings to the City for not having to pay officers overtime. On the plus side, the way things are done now, when charged as a felony any fines and costs imposed upon conviction does not go to the City even though Burton officers are the arresting agency, they go to the County because the charges initiated under State Law. If this ordinance is adopted and if the charges brought under local ordinance, the fines, costs, and the revenue derived from that will come to the City of Burton, not the County. It won't make us rich, but as the Chief's letter points out, we only have about 5 of these prosecutions in a year. But it is some revenue coming back to the City that now goes to the County. There is a real cost savings in not paying the officers' overtime going to preliminary examinations and there is some revenue coming to the City for the fines and costs upon conviction for any prosecution brought under the new ordinance.

Mr. Wells asked how many ordinances go to the County and once prosecuted by them, the City of Burton doesn't get any retribution for.

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Mr. Austin said this is a felony now that can be easily prosecuted as a misdemeanor because the underlying offense is not that serious. He expressed further that he couldn't make a misdemeanor out of murder, rape, armed robbery, or assault with intent to murder. We are willing to take all the felonies that fit as misdemeanor and have them available for prosecution, but they have to fit as misdemeanors. Joyriding fits as a misdemeanor under some circumstances. If a young person takes a car and totals it and has prior convictions for similar things, they may want to charge it as a felony even though the misdemeanor may be available. You have to weigh the conduct and prior record to determine whether to charge it as a misdemeanor or felony.

Mr. Wells asked who is going to make this call.

Mr. Austin replied the detective in charge of the case.

Mr. Wells inquired further regarding defining joyriding.

Mr. Austin responded that joyriding is with no intention to steal. If it is larceny of a vehicle, it is a 5 year felony. That is a different thing. Joyriding is someone that gets into your car, a crime of opportunity with no intention to steal your car and deprive you of ownership of it. Whether to charge as a felony or misdemeanor is a decision of the detective.

Discussion ensued further regarding joyriding. Mr. Wells said since it is first reading he is going to vote for it. He will have more discussion with the Chief, Mr. Martinbianco and Mr. Haskins. Since Mr. Haskins is in the law enforcement field, he would like to have some of his ideas.

Mr. Austin re-iterated that if adopted, it gives officers another option as to how to charge a case and in this instance; it offers potential savings of not having officers sit and wait for a preliminary examination that may or may not ever happen. We may get some small return on the fine and cost money upon conviction. It is not going to make the City rich but it is better to have that money then go to the County.

Mr. Wells said you make a good point about the officers sitting down there half the day.

Mr. Austin said it is a far bigger savings than the money we might get back as far as the fine and cost money. That is a very small amount but the real savings of paying those guys overtime sitting hours on end waiting for a preliminary examination.

Mr. Wells said the real cost is after they have done all this, they have gone through the 3 or 4 pre-trials and then to let them back on the street anyway with a slap on the hand and a year's probation, is a never ending cycle.

Mr. Austin said 99% of these low-grade joyriding cases if charged as a felony, are going to be reduced to misdemeanor status or bundled up with other crimes and dismissed all together as a result of the plea bargaining process. I am not saying that is evil, it is going to end up at the misdemeanor level or dismissed anyway, why not have the option of charging it initially as a misdemeanor under local Burton ordinance.

Mr. Wells expressed that is the exact point and where the cost savings is.

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Mr. O'Keefe stated both he and Mrs. Ellenburg had a lengthy discussion with Attorney Austin and asked him similar questions. He doesn't believe there is a down side to this. We both recommended it come to the Council. It makes all the sense in the world and I will be voting yes.

Mr. Heffner said he has a concern. If his truck is in a parking lot and someone has taken it without his permission, to him it is stealing. Whether they take it 10 miles down the road and say I was going to give it back to you, that is stealing. This doesn't make any sense to me.

Mr. Austin said if they have taken it with the intention of stealing it, it is a 5-year felony. This doesn't change any of that. If it is determined it is a joyriding situation, this offers the opportunity to charge it under a local ordinance. If it is determined the theft of your vehicle was a larceny that should be charged as a felony.

Brief discussion continued regarding joyriding and various circumstances.

Mr. Heffner said he will vote on it tonight for a first reading and we will have time to re-hash this at the next meeting.

Mr. Heffner said they would be meeting at the Library next week to discuss where the benches are going to be cemented in.

COUNCIL ACTION:

Ellenburg moved and O'Keefe seconded the following motion:

1. Approve and authorize the Attorney Billing (Richard Austin) from August 29, 2012 through September 10, 2012, in the amount of \$3,467.25.

Motion carried 5-0.

Heffner move and O'Keefe seconded the following motion:

2. Approve and authorize the Attorney Billing (Keller Thoma) 440 East Congress, 5th Floor, Detroit, MI 48226, for invoice dated August 1, 2012 in the amount of \$1,366.71.

Motion carried 5-0.

Heffner moved and O'Keefe seconded the following motion:

3. Approve and authorize the Attorney Billing (Keller Thoma) 440 East Congress, 5th Floor, Detroit, MI 48226, for invoice dated September 1, 2012, in the amount of \$2,661.28.

Motion carried 5-0.

INTRODUCTION OF AN ORDINANCE:

Heffner moved and O'Keefe seconded the following motion:

1. Approve and authorize the Introduction of an Ordinance, an Ordinance Amending Chapter 145 of the City of Burton Code of Ordinances to Outlaw Joyriding by Individuals Who Take or Use Another's Motor Vehicle Without Permission to do so Without Intent to Steal the Motor Vehicle, or Who is a Party to the Taking Within the City of Burton and to Provide Criminal Penalties for the Violation Thereof.

Motion carried 5-0.

Meeting adjourned at 8:18 p.m.

Julie Adams, City Clerk