

CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
AUGUST 17, 2009, 7:00 P.M., COUNCIL CHAMBERS
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Council President Tom Martinbianco led the Invocation and Pledge of Allegiance.
The Regular Meeting was called to order by President Tom Martinbianco at 7:00 p.m.

MEMBERS PRESENT: Martinbianco, Conley, Heffner, Ellenburg, Zelenko, Tinnin and Haskins.

MEMBERS ABSENT: None.

OTHERS PRESENT: Mayor C. Smiley, G. Kray, DPW Director and J. Adams, Dep. Clerk.

Mr. Martinbianco asked for prayers for Clerk Gayle Webster's critically ill brother and her family.

Haskins moved and Heffner seconded the following motion:

Approve and authorize the minutes of the Regular Council Meeting on August 6, 2009 at 6:00 p.m.

Motion carried 6-0. (Please note: Mrs. Tinnin was not present for this motion).

ADMINISTRATIVE REPORT:

Mayor Smiley said the City has had a very successful summer. This year we had the Gus Macker event, Memorial Day, and Back-to-the-Bricks. Another Trick or Treat Trail at Kelly Lake is scheduled for October 24th. This was held for the first time last year and was very well attended. The Veterans Day service will be on November 11th at 11:00 a.m. at our Veterans Memorial. The Atherton School Band has been invited back to be in the Fiesta Bowl on New Years Day. They will need some more support.

COMMITTEE REPORTS:

Mr. Heffner said the Parks & Recreation on Friday night had the Back-to-the-Bricks 60s Woodstock event. Everyone had a really good time. The Trick or Treat Trail will be held on the Saturday before Halloween. They are looking for businesses to hand out candy and be involved with us.

AUDIENCE PARTICIPATION:

Rick Fuhst, 1208 S. Genesee, said it was a successful weekend with Back-to-the Bricks and next weekend is the Crim. He had seen in the news that representatives in Lansing and Washington are excited about Flint getting the engine for the new Chevy Volt. He feels we should not rely 100% on the automotive industry and should reach out to find other industries that the City and County direly need.

Tammy Bates, 5453 Raymond Ave., said she is here about the increase in the sewer bills and the hardship it creates. Mrs. Bates asked that the young adults that got into trouble for spinning their wheels and received tickets from the police during Back-to-the-Bricks, receive some kind of help so this does not go on their insurance or points on their driving record.

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Deborah Walton, 1224 Carman St., stated they still have the skunk problem. They found out that Wells Fargo owns the home at 1205 Carman St. The skunks moved to another home that had garbage stacked up. Code enforcement has not showed up. She asks Council to vote for the First Reading of an Ordinance to help not only them, but also other residents in the City having the same problem. She received calls and some were threats from people that don't like what she is doing on Carman St. They don't want their tax dollars used for skunks. These are properties that no one takes care of. Mrs. Walton indicated a problem with a City employee. She provided Mr. Martinbianco with information on this.

Mr. Martinbianco said it is outside the perimeters of the Council under Section 4.3 of the Charter, to direct City officials that are not under our authorization to be able to direct them in a certain fashion. He will share Mrs. Walton's concerns with the Mayor

Crystal Larsen, 1215 Carman St., said the skunk problem has gotten so out of control with some of the things that have been put in the newspaper. The ordinance would help everyone in the City and not just residents on Carman St. Mrs. Larsen presented pictures to Mayor Smiley of the house and property in question.

Tim Bates, 2075 S. Term, inquired regarding the sewer increase. He asked if a meter could be installed to help decrease the sewer bills. Mr. Bates said times are very hard and his job slowed down to nothing. They lost accounts they had for 15 years. He feels there should be a write up to explain the sewer increase.

Mr. Martinbianco said according to the current ordinance, if you chose to have the City meter your water that you would normally use (for domestic use), they would install a meter and have a read on the outside, and then you would pay a readiness-to-serve charge to the City. For any residence read by a meter, you would pay whatever that rate was for your consumption. Mr. Martinbianco expressed to Mr. Bates that he would be glad to explain in depth at a later date the reason for the sewer increase to give him a better understanding.

Richard Smith, (address not given), stated he was invited by Mrs. Ellenburg to give some insight on skunks. He has a nuisance control business. The City of Burton, Baker College, and the South Flint Plaza are a hotbed of activity as well as other areas for skunks. The bats and woodchucks are going crazy too. There are certain neighborhoods where it is horrific. The State of Michigan sets guidelines as to what I can and cannot do, what equipment I can use and the times of the year I can do things. I can't go over to a neighbor's property. I can only work on the property of the person that makes the complaint and hires me. Generally, breeding season is in February. In 60 to 90 days they have their litter that can be 2 to 6 animals. Mr. Smith stated further, he has 46 years of trapping experience. He has been an instructor and trapped all over the country. Skunks and other animals have become very aggressive and partly due to the economy. People that were feeding the animals years ago can no longer afford to now. The animals are still there looking for free handouts. He sees a tremendous amount of aggressive behavior going on in all of these animals and believes it reflects on hard times.

COUNCIL DISCUSSION:

Mrs. Ellenburg addressed Mrs. Bates concerns with tickets being issued at Back-to-the-Bricks. She said a person could go to Court and try to fight it. They will pay the fine but get the points taken off their record. As Council, we can't do anything about it. Mrs. Ellenburg addressed Mrs. Bates question on sewer increases. Mr. Martinbianco felt her response was not quite accurate.

Mr. Martinbianco clarified that water users will always be metered if they are on City water. Well users who are always on a flat rate, remain on a flat rate. However, the flat rate went from almost \$54.00 a quarter to \$90.00 a quarter. Two years ago in June, we transferred \$325,000 out of the sewer unappropriated surplus to cover an overrun in treatment charges. This past year, we transferred \$365,000. The question is, how many years do you want to use sewer unappropriated surplus to continue what we are calling sewer treatment charges going the other way. If we had done nothing, next year we would have taken \$500,000 out of the unappropriated sewer surplus, transferred it back and subordinated that. Two things would have happened. Water consumers would have continued to bare the larger share of the burden for that sewer overrun, and the well consumers who were already paying \$84.00 a quarter, would continue to pay \$54.00 a quarter for. You have to understand what transpired over the last 5 years and what has happened to the County.

Brief discussion continued on the sewer rate increase, the Finance Committee's recommendation, Consumers Energy rate increases, and the Genesee County Drain Commission.

Mr. Heffner said if Mr. Bates got a meter on his water, chances are his rate would go down. He would like to have a Finance Meeting to discuss lowering the rates for the meters. Regarding the sewer increase, the County raised the rates. We didn't agree with it but we had to pass it on. The City was eating the costs for 2 years and couldn't afford to do it anymore. Mr. Heffner said he will get with the other Finance Committee members to schedule a meeting. Mr. Martinbianco said Mr. Kray and Mr. Holzer should be in the meeting to talk about the costs of meter setting. It could already be set by resolution and we may need to amend it regarding the meter setting fee.

Mrs. Tinnin asked if the meter rate has been negotiated between Genesee County Waste Water Division and communities.

Mr. Kray said that rate is already in place. It is approximately \$250.00 for the meter and the fittings. The resident would come to DPW and purchase the meter and fittings from us, they would then install that on their well supply lines to the home. He recommends installing a tee to put the outside spigots prior to the meter so they don't get metered for the water going to the outside spigots. They can either install a meter themselves or have a plumber do it. We will inspect the spigot installation and put them on the read route. It is a \$5.00 per read charge. This is a quarterly read because it is not on our normal route. We will probably give meters out starting this week.

Mrs. Tinnin said Drain Commissioner Jeff Wright stated it would cost \$400 to \$500.

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Mr. Kray replied that Mr. Wright estimated a cost based on what he knew from the municipalities around the County. He thinks he was coming up with a best average amount. In addition to the \$250, there is the charge also for the plumber. The cost for the meter and fittings is about \$250.00.

Mr. Heffner said he thinks all burnouts should be banned during Back-to-the-Bricks. Maybe next year we should post signs "burnouts equals ticket". When the car breaks free, you don't know what crowd they are going to end up in. There are a lot of children on the side of the roads.

Mrs. Conley expressed that a lot of neighbors on Brookwood are very concerned with speeding cars. Mrs. Conley inquired regarding Davison Road between Belsay and Genesee.

Mr. Kray said the Davison Road project is scheduled for construction next year and is set for a May or June start.

Mrs. Tinnin said she received a call from a resident who is in Minnesota for the summer months. She was not aware of the sewer increase and sent out her payment via ACH automatic withdrawal from her account. The resident has since been informed of the increase and she is worried about being assessed the late charge. She e-mailed the Mayor on August 10th about the situation and was looking for a response.

Mrs. Tinnin referenced the minutes of April 21, 2008. A resident on DeCamp had a neighbor's four foot alligator roaming her front yard. She wanted the City to have an exotic animal ordinance which we now have in place. Inserting Section 133.06 would be an addendum to that and will include skunks. It would address that it is not just the property owner, but could also be the mortgagee, and the method with which we would collect.

Mr. Austin said the wild animal ordinance is a civil infraction ordinance. In paragraph B, no person shall allow this kind of situation to exist. It determines that kind of situation constitutes a nuisance abated by the City, and the cost of that abatement be assessed against the property. The definition of owner in subsection A of the proposed ordinance, is the same expansive provision we have used in the past with the abandoned home ordinance. It would allow for a mortgagee to be responsible for the costs of the abatement of the nuisance.

Mr. Austin stated the exotic animal ordinance is going to be 133.05, which was added by 2008-1. That ordinance primarily dealt with alligators and those kind of exotic animals that people try to keep. This ordinance deals with wild animals, even though the word skunk is contained in both ordinances. It is more expansive and determines that allowing these kinds of situations to exist constitutes a nuisance, allowing the City to go in and abate the nuisance and spread the cost of the abatement on the property.

Mrs. Tinnin expressed this ordinance is necessary because we have all these abandoned homes, otherwise there is no method in place on how we can abate the nuisance.

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Mr. Austin said the exotic animal ordinance does not determine those things to be a nuisance. Essentially, that is a civil infraction ordinance that says no person shall keep exotic animals. This ordinance sets up that it becomes a nuisance, how it may be abated, and how the cost of the abatement may be spread on the property. Mr. Austin said he could have amended the exotic animal ordinance, but in the ordinances he reviewed, there is a distinction being drawn clearly between exotic animals like alligators, with the wild animals such as raccoons and skunks.

Mrs. Tinnin referenced the attorney billing showing discussion on sanitary sewer problems. She asked if there was an inflow from the storm sewer into the sanitary due to back-ups and heavy rains, and the City is sued by a resident because of damage to their property, where would the money come from.

Mr. Austin stated in his tenure as City Attorney, the City has never been sued for a backup. We haven't expended any money in litigation or in settlements of any suit for any back up during the time I have been City Attorney. That is not to say there haven't been any back-ups. Those back-ups have been dealt with successfully by DPW on a case-by-case basis and resolved without resorting to any kind of litigation.

Mrs. Tinnin said if a resident was successful and they were to litigate, where would that money come from.

Mr. Austin stated that is up to you. We haven't had any suits. Act 222 says there has to be a defect in the system before there can be any liability. So far, there hasn't been any suits filed against the City, and if there were, the City has defenses that would be available to it.

Mrs. Tinnin said if the City has not been sued but there are people that have experienced problems and have had costs associated with that, has the City settled with them on their costs.

Mr. Austin said there has been no out of Court settlements of threatened litigations. The City has dealt with situations where there have been some backups, and the City has gone in and remediated those situations. So the city has not suffered any losses as a result of litigation. There have been no threats of litigation on sanitary sewer backups as far as I am aware of. I am not expecting any suits. The DPW resolves those situations. There have been unnatural 25 year rain events that are the principle causes of these back-ups.

Mrs. Tinnin asked how do you remediate if somebody has a problem.

Mr. Kray said in the past we have gone in and cleaned damaged areas. We are looking more and more at these backups as having nothing to do with our system. It is the County's system that has not taken the flow of the sewer and we are more frequently referring those losses to the County for claim.

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Mr. Austin said we've had Jeff Wright here and had a long meeting with him and Mr. O'Brien. We discussed a lot of things. We are trying to work cooperatively with the County and yet at the same time, protect the City as well. We have an obligation to protect the City and the City's interest. Mr. Wright has an obligation to protect the County and their interest. Mr. Austin indicated he could discuss this further privately if Mrs. Tinnin would like. We don't like to publicly point a finger at the County and vice versus. We all have our interests to protect.

Mrs. Tinnin spoke on the sewer restructuring. She stated the Finance Committee met, and it was recommended to send it to Council as a whole. Mrs. Conley and myself voted against the sewer restructuring. The rates were restructured in 2007. The County increased their rates in 2009. Nothing was done during that period of time. We had a sewer rate increase of \$5.00 that the City passed on in 2006. I voted no because I think it is an extraordinary amount to increase in one sum. When you have a full fledged department like the City of Burton has, you have operational needs, but you can also control those. There are ways and methods to put in place to control those operations. I think there is going to be a big surplus. Right now we are dealing with a \$13 and a half million-dollar surplus. Deficits in preceding years, were always taken out of the surplus, it is not something unusual. It was getting to be an extraordinary amount but I think you have to cut all ways. You can't give raises, fill positions and continue to operate in the method that you are use to operating, and increase your rates like that. I think you need to show the people you have to work with them.

Mr. Martinbianco said when we get our audit report sometime in January, you will be able to elaborate on your methods of cost containment within the department and make sure those are brought forth. He looks forward to those discussions.

Mrs. Conley asked if any of the houses on Carman St. are bad enough to be on a demolition list. Mr. Kray replied that the building inspector went out on August 11th and it does not need demolition. He made sure there were no broken windows or openings into the home where the skunks could be getting in. Mr. Kray said they would look into cleaning up a lot for areas of debris that could harbor skunks.

Mrs. Ellenburg said she wants to thank the Police Department for crowd control during Back-to-the-Bricks. The event brought 5,000 people into the City, which utilized all the businesses.

Mr. Martinbianco said we need to tweak that in concert with what goes on in Grand Blanc and the City of Flint. Our hours of operation should be tweaked essentially between those 2 communities.

Mrs. Ellenburg said if our City gets involved in the Back-to-the-Bricks that Flint is holding, maybe we could send someone from Burton to be on one of the Committees, and that way we can be on top of all the rules, etc.

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Mrs. Zelenko addressed the proposed ordinance and gave examples of situations with birds and squirrels and questioned what may be considered the maintaining of wild animals. Mrs. Zelenko asked if it is Mrs. Tinnin's intention to have a Legislative Meeting to review this.

Mrs. Tinnin said it wasn't her intention to have a Legislative Meeting. Council can vote either yes or no for a First Reading. She thinks it is pretty explicit and there shouldn't be a problem on how this is going to be handled.

Mrs. Zelenko said she feels the ordinance is not tight enough, and it is opening up to squirrels and bird feeders.

Mr. Martinbianco clarified that this is not an amendment or an addition to any other ordinance.

Mr. Austin acknowledged it would be adopted as a stand-alone or become a part of the codified ordinance. He is not advocating for or against the ordinance. It is conceivable that you could interpret the definition of wild animals to include birds. I specifically designated monkey raccoon bear skunk fox poisonous snake, leopard and other similar warm-blooded animals. A bird in my opinion is not similar. I suppose you could say a bird is a warm blooded animal and thus similar in that respect, but I didn't use the word bird. I only used these words to outline these animals, or similar animals as these. That is how I attempted to limit that.

Mrs. Zelenko said she does not think snakes are warm blooded.

Mr. Austin said we might want to cross out snakes and that really belongs in the exotic animal ordinance.

Mrs. Zelenko said she doesn't want to prolong anything that we could put in place to alleviate the problem in certain areas of the City, but on the other hand, I don't want to create more problems either. If we are not going to have a Legislative Committee Meeting to hash this out, I will be voting in the negative on this tonight.

Mr. Martinbianco stated For-Mar wants to depopulate the deer population. The Attorney provided some information about how we changed our statute a couple of years ago, to go from a specifically confined area where hunting was legitimate, to a specific set back under which it had to be observed. Are those wild animals going to come under the same gendarme? Whether or not they are within a specific range, being For-Mar, now all of a sudden those wild animals are creating a problem with the arboretum in For-Mar, they want to conduct a controlled hunt and that is going to have to meet certain City specifications which in are in excess of the DNR specification, with respect to hunting set-backs. He feels this particular issue needs to go to the Legislative Committee. He brings up For-Mar because wild animals are wild animals in their own right. It doesn't make a difference as far as I am concerned about what they are. If we are going to have control measures, we need to have them based on a wide and broad range of facts.

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Mrs. Tinnin said we could debate this all night and send it to Legislative, but the people in the community want action right now. This could be adopted and if Mrs. Zelenko feels the poisonous snakes are not warm blooded and it goes back and the City Attorney thinks it should go to the exotic ordinance, it can be changed later on. In the meantime, you are taking action and moving this forward so the people can get the help to remedy this situation.

Mrs. Zelenko said in the ordinance, specifically under Section B, #2, allowing or permitting a wild animal or animals to damage the property of anyone other than its owner, including but not limited to, turning over garbage containers or damaging gardens, flowers or vegetables, or repeatedly defecating upon the property of another. That really drew attention to her. If I have a squirrel's nest and it is over eating the neighbor's tulip bulbs, do I have to remove that squirrel's nest. I could fall under this and I think it has gone too far.

Mrs. Ellenburg acknowledged she was reading that same section in the ordinance. She has squirrels and they dig up her garden on a daily basis. They are in my neighbors' trees and not mine. I think we are going to have everyone calling when there is a problem whether it is a rat or rabbit, squirrels, skunks. Mrs. Ellenburg said she went into the neighborhood on Carman St. four nights in a row. She smelled a skunk that was hit on Grand Traverse in front of the Senior Center. She spoke to some residents and they mentioned skunk problems a couple of times this summer. I investigated it and didn't see anything.

Mr. Haskins mentioned it was a great weekend for the City with Back-to-the-Bricks. Thousands of people were here and it was a great event. An awards banquet by the Parks & Recreation was held. He umpired the coaches versus the umpires' game and that was a lot of fun too. He had concerns with the proposed wild animal ordinance at the last Council meeting about regulating and how it would be taken care of. Now that the ordinance is drafted, there are a lot of holes involved with this ordinance. He is sympathetic about the skunk situation and the odors they create. There are different ramifications that possibly need to be done that should go to the Legislative Committee to try and come up with a good agreement. If a skunk got caught or trapped, how would we enforce the mortgage company to pay for it. How are we going to prove that the skunk lived there. You catch the skunks but that is not taking care of the problem. What is providing the skunks shelter or food? I also see a problem with Section 2, under E, the 10-day rule as far as the code enforcer going out.

Mayor Smiley stated how would he know in 10 days if the skunk has been removed or not. He is open to ideas on that.

Mr. Haskins said this ordinance is not addressing the issue, it might be a temporary solution but it is not going to fix the problem. This ordinance does address birds, woodpeckers. A neighbor has a nest of woodpeckers in their tree that comes over to peck on the tar on my house. This does address birds, whether it states it in the monkey, raccoon, bear, under Section 3 wild animal, but if you turn further, it does address birds. There are geese out at Kelly Lake. You may start out at the beginning saying you are not addressing wild birds, but when you get into the distinction that causes a nuisance, we are definitely getting into that category.

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Mr. Haskins spoke further of the possibility of fining mortgage companies per day. If they can't take care of the issues to eliminate the skunks actually coming in, I think that would be best. I encourage the Legislative committee to get back together. The Legislative Committee should have met in the first place over this ordinance instead of doing a rough draft and costing the taxpayers quite a bit of money for the Attorney to draft up. Mr. Haskins said he cannot support the ordinance the way it was written.

Mr. Haskins spoke on the sewer rates and Mrs. Tinnin's comments on operational controls. We went over the budget and there wasn't anything discussed in that nature. The way the City has run and tried to do cuts with all the work that has to be produced that they can't keep up with now, I don't see where that comes from. Are we up-to-date on work? Are there days the guys are sitting around with nothing to do? Are there operational control cuts somewhere that could have been done that we overlooked as Council?

Mayor Smiley stated no. Over the years we have cut back and cut back. Every time we have cut, something else is not being done or another unfunded mandate is being put on us. We have adequate personnel to do what we do and we do a great job in maintaining our sewers. I just want to say thank you to those that voted for it because this is critical. This is 100% pass through from Genesee County to us. Mr. Wright changed his philosophy and went to a per unit factor, a 100% increase to our residents and none added for the City of Burton. If the four of you hadn't passed it, we would sooner or later be in a receivership. Mayor Smiley cited as an example, the previous Council did not transfer the money for the building department. It is funded by General Fund but offset by building permits. They decided not to transfer the deficit and we had to go to the State Treasury. You can't pay Genesee County a million dollars but only collect \$600,000 from our residents and continue to survive the sewer department. We have a fiduciary responsibility to make sure our cost meets the costs we are charging our residents, and we do that. We are under BOLT.

Mr. Kray said we didn't increase the amount we put on the bill for the City. It was the old County rate plus our City charge. When the County put in their new rate, we added the same City charge. We didn't increase the City portion. We eliminated the excess sewer charge that we use to charge. We actually lowered what we charged. The single well users won't see that but our metered customers will see a lowering in their bill.

Mr. Kray said he is paying \$96.50 a quarter in Grand Blanc, and the Controller is paying \$92.00 to \$93.00 a quarter in Swartz Creek. Plus the municipalities charge for the service they provide, the cleaning and sealing of the lines. Our charge is lower than the communities around us.

Mr. Haskins said Council takes the hit with increases just as the residents do, and they have to protect the City and its finances. He checked with other municipalities, and he believes Swartz Creek not only went up the extra amount on the sewer, but they also tacked more money onto it. We as Council didn't add any extra on, we just did the pass through from the County.

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Mrs. Tinnin said we could move the ordinance forward tonight, bring the proposed changes to the meeting and schedule a Legislative Meeting prior to the next Regular Council Meeting and discuss the proposed changes, and bring it to the Council for a Second Reading.

Mr. Haskins stated being able to correct anything in there, this whole thing needs to be abolished and started over. We need to go after abandoned structure owners and not chase wildlife.

Mr. Martinbianco asked Mr. Kray for an update on Center Rd.

Mr. Kray said Center Road is about a week behind schedule. There were some snags at Lapeer. The contractor did not change the completion date because they made up some time in other areas. We should see paving late this week.

Mr. Martinbianco asked if there were any environmental issues down Lapeer Rd. Mr. Kray expressed there were none. In the past, that area had problems. We did not hit any bad soil that would require us to remediate anything.

Mr. Martinbianco asked if anything could be done about Lapeer Rd. between Belsay and Vassar even in a remediating thing. He expressed ditching or to alleviate drainage problems. Davison Township did spotty areas on the east side of Lapeer Rd. between Vassar and Irish Rd. on the badly damaged areas. Maybe we can get residents out of the mud over there before fall comes. There are drainage issues on the shoulder of the road on the south side, which is above the grade level.

Mayor Smiley said there may be some extra money, thanks to our DPW Director Mr. Kray. We received money for Center Rd. from the City of Flint. We can come up with some ideas and have something on the next agenda to help with repairs.

COUNCIL ACTION:

Haskins moved and Conley seconded the following motion:

1. Approve and authorize the Attorney Billing (Richard Austin) from July 29, 2009 through August 12, 2009 in the amount of \$6,224.50.

Motion carried 7-0.

Conley moved and Heffner seconded the following motion:

2. Approve and authorize Councilwoman Ellen Ellenburg as the delegate to the Annual MML Convention to be held at the Radisson Plaza Hotel in Kalamazoo, Michigan on September 22-25, 2009.

Motion carried 7-0.

Heffner moved and Haskins seconded the following motion:

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3. Approve and authorize Mayor Charles Smiley as the alternate delegate to the Annual MML Convention to be held at the Radisson Plaza Hotel in Kalamazoo, Michigan on September 22-25, 2009.

Motion carried 7-0.

INTRODUCTION OF AN ORDINANCE:

Tinnin moved and Conley seconded the following motion:

1. Approve and authorize the Introduction of an Ordinance, Ordinance 2009-8-133.06, to regulate and proscribe the possession of wild animals within the City of Burton, and to provide penalties for the recovery of costs incurred in the removal of such animals by the City, and to declare the keeping of such animals is a public nuisance and to provide penalties for the violation thereof.

Motion failed 6-1, with Martinbianco, Conley, Heffner, Ellenburg, Zelenko and Haskins voting no.

Meeting adjourned at 8:50 p.m.

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