

**MINUTES OF REGULAR SESSION  
HIGHLAND CITY COUNCIL  
MONDAY, AUGUST 3, 2009**

Mayor Michaelis called the Regular Session to order at 7:00pm. Councilmembers present were Rickher, Bardill, and Bellm. Councilwoman Zobrist was absent. Others in attendance were City Manager Mark Latham, City Attorney John P. Long, Directors Gillespie, Rosen, Rusteberg, and Schoeck, Police Chief Bell, Supervisors Stram and Limestall, Treasurer Foehner, Deputy City Clerk Hediger, City Clerk Bellm, 21 citizens, and 1 member of the news media.

**MINUTES**

Councilman Bardill made a motion to approve the minutes of the July 20, 2009 Regular Session as attached; seconded by Councilwoman Bellm. Councilwoman Bellm requested the following amendments: Page 4, Paragraph 2, Sentence 17, should state ‘Councilwoman Bellm ask Attorney Long to draw up an ordinance that allows for a café ordinance, regardless of food, on the city’s right of way, very similar to Edwardsville, as long as it meets ADA requirements, has a fenced in area, adding the city as additional insured, and complying with dram shop liability.’ Roll Call Vote to approve minutes with amendments: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried.

**PUBLIC FORUM**

Citizens’ Requests and Comments:

*BSA Troop #40 – Silver Lake/Silver Lake Park Use Request* – Scott Schuepbach, Asst. Scout Master requested permission for Scout Troop #40 to use Silver Lake this weekend, August 8-9. We would like to do canoe instruction and then canoe across Silver Lake to Mr. Rich Schrupf’s place where we will campout over night. We will then canoe back the next day. Councilman Bardill made a motion to approve the request of Boys Scouts Troop 40 to use Silver Lake Park as requested August 8-9, 2009; seconded by Councilwoman Bellm. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried.

Susie Pfister, with Hirsch’s Tavern, located at 620 Broadway, stated I have been here several times requesting to have tables outside allowed, and a change to the ordinance for people to eat, drink and smoke outdoors at the tables. I did get copies of the proposed ordinances that will be discussed tonight, and I have a couple of questions. Ms. Pfister pointed out the drafted ordinance states the restaurant, general or bar/tavern adjacent to where the tables are located must be a food establishment that falls within Categories 1, 1(a), 2, 2(a) of permit classifications. Can someone explain to me what those categories are? City Attorney John Long explained those are food categories that call for food preparation on the premises, as opposed to just heating up prepackaged foods. Ms. Pfister stated I am Category 3. Why would Category 3 establishments be excluded? Attorney Long responded I wrote this up on the basis of Collinsville’s ordinance, rather than Edwardsville’s ordinance. That ordinance says a sidewalk dining area should go hand-in-hand with a service of a full menu of food, either for lunch or dinner menu. My partner pointed out that it does no good to use the term “full menu” in the

ordinance, because there would be arguments about what constitutes a full-menu food. Ms. Pfister stated my license states, 'be it knows this food service facility is licensed to operate in Madison County, State of Illinois, and is subject to the provisions of the Madison County Food and Sanitation Ordinance.' Attorney Long stated I am not arguing with you on that. I am not sure what you want me to say. Ms. Pfister asked why would I not be allowed to serve food outside. Attorney Long explained I was trying to put into place a clear cut enforceable definition. I did not think the terminology used in Collinsville's ordinance of a full-service menu was enforceable. Therefore, I thought restricting it to establishments with on-site food preparation would help make this something that would be directly related to dining versus just a beer-garden. Ms. Pfister stated whether you are eating a frozen pizza or a filet mignon, you are dining. I am the only one with a Class C license; that is why I am concerned. Attorney Long stated this is my recommendation. Susie questioned the proposal is to not allow these areas to be open after 9pm. Attorney Long confirmed the operation hours are set at 11:00am to 9:00pm. Susie inquired about the ability to allow smoking at the tables. Attorney Long stated we must comply with the Smoke Free Illinois Act, which prohibits smoking within fifteen feet of any door or window. Susie stated I do not have windows that open. Attorney Long stated then I think that would comply. Susie stated the drafted ordinances allow for this in C-1, C-2, C-3 and C-4 zoning. I believe I am zoned C3 Business. Do you know? Attorney Long stated I am not sure; however, I am sure you fall within one of those districts allowed. Susie stated this ordinance states that establishments must clean the sidewalk. I have been told the law is, if you clean, then you are liable if someone falls; if you do not clean, then you are not liable. Attorney Long acknowledged case law shows that if you clean the sidewalk, and someone is injured, then you failed to provide a safe passageway. If you did nothing, then it is not your fault. That is case law, it is not a statue. However, if you are going to have sidewalk dining, then you have a responsibility to clean the sidewalk. I am not going to write an ordinance that advises the City not to make establishments liable, if vendors want to sell on the sidewalk.

#### Requests of the Council:

Councilwoman Bellm addressed the issue of the availability of the public restrooms on the Square. I would hope that we could discuss hours that the bathrooms would be open. I recognize they were constructed with the specific purpose that if we hold an event at the Square there is public facilities. It has been pointed out that on numerous occasions, by several people that they wish the restrooms were available more. She acknowledged we may be opening it up for the possibility of vandalism by a few. However, could we work something out to have them open longer and have it checked by the Parks and Recreation Staff? Unfortunately, the ladies' restroom ran out of toilet paper during the Street Art Festival. I broke into the Chamber of Commerce's office and refilled it. I would like to see the restrooms open until 10-11pm during the summer months. A lot of the pipes, valves, and electrical panels are covered. Councilman Bardill pointed out that during the evenings is probably when there is increased vandalism. Chief Bell expressed he would feel more comfortable limiting it to daylight hours. Councilman Rickher agreed with daytime hours only. I am uncomfortable with the thought of someone being pulled in there and assaulted. Director Rosen reported Parks and Recreation staffs' day ends at 3:30pm. We would have to send someone up on overtime. Unfortunately, we had an incident of vandalism this past weekend. He suggested limited hours with established dates so the schedule of hours could be posted. If the PD could lock them, then I would be fine with that. Mayor Michaelis asked how it worked with the restrooms under the gazebo. Director Rosen reported that during Jerome's term we had them open; we closed them near the end of his term, because of odors and vandalism. Mayor Michaelis asked, other than this weekend, have there been problems with vandalism. Director Rosen responded no. However, we have been having staff lock them after the PBJ events are over on Fridays. Councilwoman Bellm stated she would like to try having them open Monday thru Friday, during business hours, and see what happens. If there is vandalism, then we will have to reevaluate.

#### Staff Reports:

*Changing of Street Name – Hemlock Street Extension* – City Manager Latham reported Councilman Rickher had requested we look into changing the name of the Hemlock Street Extension to Industrial Parkway. That name was submitted to the Madison County 911 coordinator. It was rejected

because they felt there were too many other addresses in the system, for other areas of the county, with that name, or similar, already in the system. It was suggested the council members come up with three alternate names; then we will resubmit. Councilman Rickher explained the intent is to create names that would attract business.

*Deputy Clerk Hediger's Registered Municipal Clerk Designation* – City Manager Latham publicly acknowledged that Deputy City Clerk Lana Hediger has achieved Registered Municipal Clerk status.

## UNFINISHED BUSINESS

Bill #09-76/ORDINANCE Amending the City's Future Land Use - Councilwoman Bellm made a motion to approve Bill #09-76/Ordinance #2371 amending the Future Land Use Map for the Comprehensive Plan of the City of Highland as attached; seconded by Councilman Rickher. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried.

## NEW BUSINESS

Approve Transfer of Spaces in the City Cemetery - Councilman Bardill made a motion to approve the transfer of cemetery spaces, Block 18, Lot 11, Grave 6, from Mrs. Aneda Rutz to Dwight J. and Beverly A. Ayers as attached; seconded by Councilman Rickher. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried.

Bill #09-84/RESOLUTION Approving Incentive Payments and Waiver of Fees for Highland Development Group, LLC's Construction of Assisted Living Facility and Related Job Creation - Councilwoman Bellm made a motion to approve Bill #09-84/Resolution #09-08-1799 approving incentive payments and waiver of fees for Highland Development Group, LLC's Construction of assisted living facility and related job creation as attached; seconded by Councilman Bardill. Councilman Rickher stated I am trying to find out what we actually talked to them about. Did we just pass, originally, the matching of tax abatement equal to the school's tax abate? City Manager Latham explained the council just approved the matching of tax abatement; we did not include the agreement that we had made with them with regards to waiver of fees and job incentives. Attorney Long stated it was omitted in the resolution approved by the council to abate taxes. Councilman Rickher summarized they brought it up that they had requested and we had agreed to it, but in error we did not put that into the resolution previously passed. City Manager Latham agreed. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried.

Bill #09-85/RESOLUTION Authorizing Rebates of Building Permit Fees to "First Purchasers" of Single-Family Residences Newly Constructed within the City's Corporate Limits – Councilman Bardill made a motion to approve Bill #09-85/Resolution #09-08-1800 authorizing rebates of building permit fees to “first purchasers” of single-family residences newly constructed within the city's corporate limits as attached; seconded by Councilwoman Bellm. Councilman Rickher inquired what about the contractor that is building a spec house. Does he get the credit? City Manager Latham pointed out this gets paid at closing to the home purchaser. Councilman Rickher asked is the title written correctly on the resolution. Attorney Long reported it has been corrected. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried.

Bill #09-86/RESOLUTION Setting Conditions Upon the City's Acceptance of Vulliet Road as a Public Road and Upon its Widening – Councilwoman Bellm made a motion to approve Bill #09-86/Resolution #09-08-1801 setting conditions upon the city's acceptance of Vulliet Road as a public road and upon its widening as attached; seconded by Councilman Rickher. Councilman Bardill expressed I have a problem with the third “whereas”. It appears the properties along the west side of the roadway

must be annexed in for this to occur. Attorney Long responded that is the understanding I received as the direction the council wanted. Councilwoman Bellm stated my thought in this process is that if the city is going to use tax dollars to build or improve a road, then the residents along that roadway should be a part of the city. Councilman Bardill contended they should not have to give up their property for that. Attorney Long explained the right of way would have to be donated to the city, in addition to annexation. Councilwoman Bellm pointed out the property owners asked the city for the roadway to be improved. If you look at the dollar amount for the right of way and the cost of improvement, I have a hard time spending that money as things are now. Attorney Long pointed out the cost of right-of-way acquisition was estimated at ~\$60,000. Director Gillespie reported an estimated \$215,000 for roadway improvements. Councilman Bardill stated this just rubs me the wrong way. Councilwoman Bellm stated I have a problem with spending taxpayers' dollars to improve something that is not within the city's limits. Mayor Michaelis noted the road itself is in the city's limits. Roll Call Vote: Rickher and Bellm voted aye; Bardill and Mayor Michaelis vote nay. Motion failed.

Bill #09-87/RESOLUTION Approving Water Tank Maintenance Contract with Utility Service Co., Inc. – Councilman Bardill made a motion to approve Bill #09-87/Resolution #09-08-1801 approving water tank maintenance contract with Utility Service Co., Inc. as attached; seconded by Councilwoman Bellm. Councilman Rickher asked did we look into other options, like building a new tank. I am looking for analysis to show we looked at other alternatives. You are looking at \$415,000 over five years for this. Should we look into something new or another alternative? Director Gillespie reported the tank is showing its age. It should have been painted several years ago. With the location, being in the center of town, a new tower would need to be located near the center of town for pressure, and it needs to be relatively high elevation. Councilman Rickher expressed I feel we should look at this further. Councilwoman Bellm asked was this in the budget. Director Gillespie replied yes, it has been in there for several years. This was the first time that we came up means for financing it. Councilman Rickher asked are we at a critical stage. Director Gillespie replied yes, we are getting to the point of structural issues. We hope to start the process in September. All of the work is done up front; we pay for it over five years. Councilman Rickher asked can we get out of the contract. Attorney Long replied yes, with 90-days written notice. We would have to pay for the five years at that time, regardless of where we are at. Director Gillespie pointed out that if any defects appear during the contract, then they make the repairs at their costs. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried.

Bill #09-88/RESOLUTION Approving Contract with HDR for Engineering Services Related to Clean Lakes Improvements on Silver Lake – Councilwoman Bellm made a motion to approve Bill #09-88/Resolution #09-08-1802 approving a contract with HDR Engineering, Inc. for engineering services related to Clean Lakes Improvements on Silver Lake, in the amount of \$116,350.00 as attached; seconded by Councilman Bardill. Councilman Rickher asked is this in our budget for this year. Director Rosen replied yes. Councilman Rickher asked how they are going to complete some of the deadlines proposed for July, when it is already August. Director Rosen explained they have a lot of our information in their system already for the reports, as well as contacts with the EPA. Councilman Rickher asked Director Rosen, do you feel good about this contract and their ability. Director Rosen replied yes. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried.

Bill #09-89/RESOLUTION Approving Contract for Engineering Services with Oates Associates, Inc. for Development of a Bike Trails Master Plan - Councilman Bardill made a motion to approve Bill #09-89/Resolution #09-08-1803 approving a contract for engineering services with Oates Associates, Inc. for development of a Bike Trails Master Plan in the amount of an estimated \$75,270 as attached; seconded by Councilwoman Bellm. Councilman Rickher asked is this in our budget for this year? City Manager Latham replied no. We spoke with Congressman Shimkus and State Senator McCarter regarding grant funding available. We found out that funding does not pay for engineering services. However, there is \$160,000 we would receive in grant funding down the road, should we get the engineering services and Bike Trails Master Plan together. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried.

Bill #09-90/Ordinance Approving 10-Year Lease for Continued Use and Maintenance of an “Original Agreement Dock” on Silver Lake – Hamil - Councilwoman Bellm made a motion to approve Bill #09-90/Ordinance #2372 approving a ten-year lease for continued use and maintenance of an “Original Agreement Dock” on Silver Lake with Dale Hamil and Francis Hamil, owners of Lot 25 in Lakeview Hills Subdivision, as attached; seconded by Councilman Bardill. Councilman Rickher stated I am not opposed to this. However, do we have specifications that the docks have to meet and liability measures in place? Director Rosen replied yes. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried. Mayor Michaelis voted yes.

Bill #09-91/ORDINANCE Establishing Sidewalk Cafés – Liquor Sales Allowed - Councilman Bardill made a motion to approve Bill #09-91/Ordinance #2373 establishing Sidewalk Cafés with liquor sales allowed as attached. Motion failed due to a lack of a second.

Bill #09-92/ORDINANCE Establishing Sidewalk Cafés – Liquor Sales Not Allowed - Councilman Bardill made a motion to approve Bill #09-91/Ordinance #2373 establishing Sidewalk Cafés as attached. Motion failed due to a lack of a second.

Bill #09-93/ORDINANCE Approving Tax Increment Financing Agreement with Terra Properties, Inc. for Development of Anderson Hospital Express Care Facility – Councilwoman Bellm made a motion to table definitely until such time as the Combined Planning & Zoning Board has had an opportunity to review the site plan and makes it’s recommendation to council; seconded by Councilman Rickher. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried; Item tabled.

Approve Change Order No. 2 for PW-04-09 Renovation of Streets & Alleys Facility – Councilman Bardill made a motion to approve Change Order No. 2, in the amount of \$36,492, for PW-04-09 Renovation of Streets & Alleys Facility as attached; seconded by Councilwoman Bellm. Roll Call Vote: Bardill and Bellm voted aye, none nay. Councilman Rickher abstained. Mayor Michaelis voted aye. Motion carried.

Approve Notice of Municipal Letting Bid #PR-06-09 Spindler Park Asphalt Trail – Councilwoman Bellm made a motion to approve Notice of Municipal Letting Bid #PR-06-09 Spindler Park Asphalt Trail as attached; seconded by Councilman Bardill. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried.

Discussion - Setting Limit on Number of *Animals* Allowed Per Residence – Mayor Michaelis stated, at the last council meeting, it was brought to the council’s attention that certain residences have a large amount of dogs. Some communities limit the number allowed. The question is if we want to look at directing staff to develop an ordinance regulating this. Councilwoman Bellm stated I would like to look at other cities’ ordinances. I don’t think we should, necessarily, be sticking my noses into how many dogs or animals people have. Although, I understand that we may have a problem. Therefore, I think we should look at what other communities are doing, as well as what type of nuisances and the number of nuisances we are receiving. Councilman Bardill stated neighboring communities have three dogs as the limit, or they must have a kennel license. Attorney Long reported Troy and Belleville have set the limitation at three. The animals must be over three months old, so that a litter of puppies does not create an issue. More than three requires a kennel license and a larger tract of land. It does not limit just the number of dogs; it states the limit is ‘three animals’. “Three” seems to be the common number. We do have some places that are creating issues. Councilman Rickher asked what about exotic animals. Councilman Bardill stated exotic animals are addressed in an existing ordinance.

Chief Bell reported I have surveyed about a dozen municipalities. “Three” seems to be the number to limit it to, for most communities. Smells, sanitation and noise nuisances are generated from these issues. You may want to look at addressing it by the number of animals that would be allowed outside at one time. Kennel issues become more difficult to regulate. We have issues addressing farm animals and exotic animals already in place. It appears Highland used to have an ordinance limiting the

number of animals, but it does not exist any more, for some reason. Mayor Michaelis asked Building and Code Supervisor Kevin Limestall if code regulates this. Supervisor Limestall replied there is nothing currently. Mayor Michaelis stated I think we should look into this. I can't image anyone that wants to live next to a neighbor that has ten dogs in the backyard. Councilwoman Bellm asked Attorney Long to draft an ordinance after gathering other communities' ordinances, and bring this to the council for discussion. It was the consensus of the council.

## **REPORTS**

Approve Warrant #777 – Councilman Bardill made a motion to approve Warrant #777 as attached; seconded by Councilwoman Bellm. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried.

Councilwoman Bellm made a motion to temporarily adjourn this Regular Session to conduct an Executive Session under the Illinois Open Meetings Act under Section 2(c)(21) for discussion of executive session minutes, 2(c)(2) to discuss collective negotiating matters and 2(c)(11) to discuss litigation; seconded by Councilman Bardill. Roll Call Vote: Rickher, Bardill, and Bellm voted aye, none nay. Motion carried. Meeting adjourned at 8:05pm.

Mayor Michaelis reconvened the Regular Session at 9:20pm. Council members Rickher, Bardill, and Bellm were present. Councilwoman Zobrist was absent. Others in attendance were City Manager Latham, City Attorney Long, Deputy City Clerk Hediger and City Clerk Bellm.

Mayor Michaelis announced there would be no action taken this evening on anything discussed in Executive Session tonight.

Councilwoman Bellm motioned to adjourn; seconded by Councilman Bardill. All council members voted aye, none nay. Motion carried. Meeting adjourned at 9:20pm.

Joseph Michaelis, Mayor

Barbara Bellm, City Clerk