REGULAR MEETING
February 5, 2018

Mayor Wayne Jett called the regularly scheduled February 5, 2018 meeting of the McHenry City Council to order at 7:00 pm in the McHenry City Council Chambers, 333 S. Green Street, McHenry, IL. In attendance were the following Councilmembers: Mihevc, Glab, Schaefer, Condon, Devine, Curry, and Santi. Also in attendance: City Administrator Morefield, Director of Parks and Recreation Hobson, Director of Economic Development Martin, Chief of Police Birk, Director of Public Works Schmitt, Director of Community Development Polerecky, Director of Finance Lynch, City Attorney McArdle, and Deputy Clerk Geraghty.

PUBLIC COMMENT

None.

CONSENT AGENDA

A. Ordinance adopting amendments to Municipal Code Chapter 2, Administration, Section 2-93  Deputy Clerk authorizing the City Council to appoint the Deputy Clerk from among existing city staff;

B. Ordinance adopting amendments to Municipal Code chapter 14, Offenses, Article II, Weapons, Sec 14-64;

C. Resolution accepting Cash Payments related to Health Insurance as Illinois Municipal Retirement Fund Earnings;

D. Mayor’s execution of an Agreement with the Chesapeake Hills Condominiums of McHenry Association accepting water and sanitary sewer mains within 10-foot easements located in the subdivision;

E. Approval of the McHenry Chamber of Commerce 2018 Fiesta Days event schedule, use of city services related to the event, special event liquor license, and location of temporary signs advertising the event;

F. Lease Agreement renewal for 3302 W. Waukegan Road to D’s Marine Service, Inc. for the term of one year ending February 28, 2018 with an option to renew for an additional year;

G. Award of bid to Woodward Printing Services in the amount of $18,540, for 2018 Parks and Recreation Program Brochure & City Newsletter printing services;

H. Request from the Siman Family Charities to utilize city streets for the annual Turkey Trot 5K on November 22, and temporary closure of a portion of the street from the exit drive at East Campus High School to the entrance to McHenry Country Club for approximately 20 minutes;

I. Pay Application #22 to Williams Brothers Construction in the amount of $781,618.32 for Wastewater Treatment Plant Improvements;

J. Pay Application #23 to Williams Brothers Construction in the amount of $253,190.06 for Wastewater Treatment Plant Improvements;

K. September 25, 2017 Special Meeting of the Committee of the Whole minutes;

L. November 6, 2017 Regular City Council meeting minutes;
M. November 20, 2017 Regular City Council meeting minutes; 
N. January 15, 2018 Regular City Council meeting minutes; and 
O. Payment of Bills in the amount of $124,326.61.

At Alderman Glab’s request, Mayor Jett announced Item D was pulled from the Consent Agenda.


Alderman Curry asked if the lease in Item F contains an opt-out clause for either side. Director Hobson answered it includes an option to renew for one additional year.

Voting Aye: Glab, Curry, Condon, Mihevc, Devine, Santi, Schaefer
Voting Nay: None.
Absent: None.
Motion carried.

**Consent Item D, Mayor’s Execution of an Agreement with the Chesapeake Hills Condominiums of McHenry Association accepting water and sanitary sewer mains within 10-foot easements located in the subdivision.**

Alderman Glab asked Director Schmitt if the sewers in this subdivision were televised. Director Schmitt answered no; it is his understanding that for the past 30 years the homeowners association has performed all the maintenance on water and sanitary sewer mains.

Alderman Glab expressed his reservations about accepting the water and sewer mains, as the city has no clue as to the condition of the mains. He expressed concerns about the proximity of the mains to the building foundations noting the city would be liable for damaging the property if they had to dig up the main and suggested the association sign a waiver. Alderman Glab said in his opinion staff needs to teleview the mains before acceptance of the mains. He stated that he is aware of the city’s initial intention to accept the lines however, they seem not to be installed in conformance to city standards, which is why they probably were not accepted by the city.

Motion by Alderman Glab, second by Alderman Curry to continue this item pending a visual inspection of the mains by staff and consideration by the Public Works Committee.

Mayor Jett recognized John Wsol, Judy Walter, and Kass Koppler representing the Chesapeake Hills Condominiums of McHenry Association and asked them step up to the podium to address the Council.

**Mr. John Wsol, 5604 Chesapeake, McHenry, IL.** Mr. Wsol stated it is a fact that the water and sewer has been in place for a long time and when the subdivision was approved, there was an
agreement between the developer and the city that the water and sewer mains would be maintained by the HOA. Mr. Wsol asked the Council how the lines in Chesapeake compare to some city lines that were installed at the time or prior to these lines. He also asked the City about the $500,000 that the residents of the subdivision have paid for water and sewer. Mr. Wsol stated in his opinion, this is a question of fairness and he asked the Council to support this agreement so that it is agreeable to both sides.

Alderman Schaefer said he assumed that under the previous agreement, the HOA had been collecting fees from the members since 1996 and asked if there was any financial part in the new agreement. City Administrator asked Mr. Wsol if there are dues assessed to the HOA members for the maintenance of water and sewer utilized in the subdivision. Mr. Wsol said water and sewer has been paid collectively by all 24 units in the subdivision along with the cost of maintaining the lines since 1996.

Alderman Schaefer asked if the city has been maintaining these lines and Director Schmitt answered no; we have flushed the hydrants when water quality was a concern. Alderman Schaefer asked if the homeowner is responsible for the main to the house, who has been paying for the maintenance. Mr. Wsol said there is no fee charged specifically for that however, if something occurred it would be paid from the general reserves of the association where money is put aside for certain things.

Director Schmitt said it is his understanding like any other HOA, monthly dues are collected to pay for maintenance of roads, storm sewers, streetlights, and in this case for water and sanitary sewer maintenance. He is aware that in the past there had been a couple of water service leaks, which were turned over to the association to repair. The original cost to install the infrastructure was most likely built into the cost of the property purchase.

Alderman Curry said the packet communicates that the IEPA construction permit states the city agrees to accept ownership of the water and sanitary sewer mains upon completion of the project. Assuming this has been completed, he asked if this was correct and had the city signed off on this. Director Schmitt said this is correct and when he began researching the matter, he found construction permits for the water main and sewer main that had been submitted to the IEPA on behalf of the developer, and signed-off by the city. There is a portion of the permit that the city signs agreeing that after construction is completed the city would take ownership of the system. Director Schmitt said he is not aware and could not determine why this turned over to the HOA and not to the city. He did find review comments from the city regarding construction of the water and sewer mains along with a punch list that was created to repair any deficiencies prior to acceptance. Alderman Curry asked about the items on the punch list. Director Schmitt said a water shutoff or valve box was not key-able and this was noted on the repair list.

Alderman Curry asked Director Schmitt if he was aware that the lines were constructed to normal city standards. Director Schmitt said yes, in fact, as Alderman Glab previously said, some of the water mains are behind the property and it is a city requirement to loop a system.
Alderman Curry said it does appear that some of the lines are installed close to the building foundations and asked if this was normal. Director Schmitt stated this is not an ideal situation however city easements vary from place to place.

Alderman Devine asked for confirmation that the IEPA permits were signed by the city. Director Schmitt said yes, there is another portion of the permit that was signed stating the city would accept ownership of the system.

Alderman Glab said he wants to ensure the city is free from all liabilities. If major problems were found in the system, it will be the city's water users that will have to pay. He again expressed his desire to televise the system before an agreement was considered and reemphasized his concerns about the proximity of the mains to the building foundations.

Alderwoman Condon asked Director Schmitt if he is confident about accepting this system. Director Schmitt answered that in his professional opinion, the city should have accepted this system almost 30 years ago. Alderwoman Condon asked Director Schmitt if it would be prudent to televise the system after acceptance. Director Schmitt stated that the department had not completed televising the current sanitary system; if accepted, this system would be added to the list. Alderwoman Condon asked if this system is comparable to other subdivisions that have not been televised and was built to city standards and Director Schmitt answered yes. Alderwoman Condon expressed her support of the agreement.

Alderman Schaefer suggested the agreement include a timeframe for the infrastructure or a contingency upon review so if something should happen, the entire burden would not be placed on the city’s existing customers.

Director Schmitt clarified the storm, roads, and streetlights in the subdivision were not built to city specifications and he is not recommending acceptance for those items. However, the water and sanitary sewer received an IEPA permit and met city specs at the time they were installed.

Mayor Jett asked the Clerk to call the roll for the motion on the floor.

Voting Aye: Glab, Curry, Schaefer.
Voting Nay: Condon, Devine, Mihevc, Santi.
Absent: None.
Motion failed.
Motion by Alderman Devine, second by Alderwoman Condon to authorize the Mayor’s Execution of an Agreement with the Chesapeake Hills Condominiums of McHenry Association accepting water and sanitary sewer mains within 10-foot easements located in the subdivision.

Alderman Santi asked City Attorney McArdle if a timeframe could be added to the motion to provide staff with time to review the system before it is accepted. City Attorney said tabling the item would be the best thing to do as there would have to be standards in the motion as to the condition for the system prior to acceptance.

Alderman Curry expressed his appreciation for the position of the residents of Chesapeake however, the city should know upfront what they are accepting and said that is why he will not support the agreement at this time.

Alderman Glab stated if this motion failed, he would like this item reviewed by the Public Works Committee prior to Council’s review.

Voting Aye: Devine, Condon, Mihevc, Santi
Voting Nay: Curry, Glab, Schaefer
Absent: None
Motion carried.

INDIVIDUAL ACTION ITEM AGENDA

A. Motion to approve a Class A(2)-3 liquor license transfer from Chain O’Lakes Brewing Company to McHenry Brewing Company d/b/a McHenry Brewing Company located at 3425 Pearl Street.

Mayor Jett reported that he met with the applicant Robert Master. Mr. Master has worked for Chain O’Lakes for a few years and his plans for the business are positive for the city.

Motion by Alderman Schaefer, second by Alderman Curry to approve a Class A(2)-3 liquor license transfer from Chain O’Lakes Brewing Company to McHenry Brewing Company d/b/a McHenry Brewing Company located at 3425 Pearl Street.

Voting Aye: Schaefer, Curry, Condon, Devine, Glab, Mihevc, Santi
Voting Nay: None.
Absent: None.
Motion carried.

B. Motion to approve a Resolution establishing an Honorary Street Dedication at the intersection of Pearl Street and Park Street as Honorary Susan E. Low Way as recommended by the Public Works Committee.
Alderman Schaefer asked how many applications the city received for this year. Director Schmitt stated three designations could have been approved for this year however with the new policy, we reviewed applications received from the prior year through the first quarter of 2018 and only two were submitted that were leftover from 2017. The city is now accepting applications for consideration in the first quarter of 2019.

Motion by Alderwoman Condon, second by Alderman Schaefer to approve a Resolution establishing an Honorary Street Dedication at the intersection of Pearl Street and Park Street as Honorary Susan E. Low Way as recommended by the Public Works Committee.

Voting Aye: Condon, Schaefer, Curry, Devine, Mihevc, Santi
Voting Nay: None.
Abstain: Glab
Absent: None.
Motion carried.

C. Motion to approve a Resolution establishing an Honorary Street Dedication at the intersection of Center Street and Grove Avenue as Honorary Leroy J. Welter Way as recommended by the Public Works Committee.

Motion by Alderman Santi, second by Alderman Curry to approve a Resolution establishing an Honorary Street Dedication at the intersection of Center Street and Grove Avenue as Honorary Leroy J. Welter Way as recommended by the Public Works Committee.

Voting Aye: Santi, Curry, Condon, Glab, Devine, Mihevc, Schaefer
Voting Nay: None.
Absent: None.
Motion carried.

D. Motion to approve 1) temporary use permit to allow a 40’ x 100’ tent at 1202 Riverside Drive (Miller Point) and live music on Saturday March 17 and Sunday March 18; 2) Special Event liquor license for the sale of beer, wine and malt beverages; 3) permit open carry of alcoholic beverages in plastic cups throughout Green Street and Riverside Drive areas; 4) closure of certain sections of Green Street, Pearl Street, and Riverside Drive from 11:45 AM to approximately 1:00 PM for the St. Patrick’s Day Parade; 5) closure of Pearl Street from Riverside Drive to River Road from 10:00 AM to 1:00 PM during the dyeing of the Fox River, and 6) Tourism Fund budget amendment not to exceed $25,000 for the McHenry ShamRocks the Fox event.

Director Hobson provided the Council with an overview of the request.

Alderman Curry stated although a few bar owners in town have expressed concerns
about the event, in general the comments he received were positive. Alderman Curry asked if there was any plan to promote businesses in town outside of paying for a sponsorship. Director Hobson said yes and he spoke to a business owner who had some ideas to get customers in and out of different establishments. Banners advertising drink specials, and special entertainment on this day are some of the ideas that will be posed to business owners. Alderman Curry asked if there was a plan to reach out to all businesses and Director Hobson answered yes, there has been discussion with the Downtown Business Association about distributing a map highlighting businesses and the specials offered that weekend, similar to the Downtown Christmas Walk.

Alderman Curry said he noticed the times have been revised and asked if this matches the times for Fiesta Days and Director Hobson answered yes.

Alderwoman Condon stated this event is being coordinated by the community at large and as the city will receive countywide recognition, she supports the event.

Alderman Glab asked that the request remove the size of the tent. In addition, any motion should state the special event liquor license will be issued to the city and, asked if the city received a state license. Director Hobson said the state license would be applied for pending Council approval.

Alderman Glab asked how the city would prevent persons from entering establishments carrying alcohol. Director Hobson said enforcement is the responsibility of the establishment owner.

Alderman Santi stated that in the years to come this could be an incredible event adding he has received a few calls and comments about the Saturday hours for live music from 3-11 PM and asked if this could begin earlier and end earlier. Two business owners have told him that they would like to host their own live entertainment at 7 PM or 9 PM and are concerned about drawing people to their establishment. They also asked if there would be an opportunity to advertisement their venue inside the Miller Point tent. Director Hobson stated that customers will go to their favorite spots to listen to music and new customers will visit McHenry. Advertising will be available.

Alderman Schaefer said he supports the event stating he was pleased the time was revised to match other festival events in town. He does not see a problem with the live music times and the more establishments that offer live entertainment, the more choices people will have.

Alderman Santi suggested staff be sure to allow all downtown business owners with the opportunity to participate in the event and advertise their events on Miller Point and other public areas throughout the downtown.

Alderman Glab suggested that live music hours should begin at 1:00 PM on Sunday.
Director Hobson responded that the hours are the same as Fiesta Days and Blues, Brews, and BBQ’s. It was also noted the bands would not be as loud as they are at Petersen Park during Fiesta Days.

Alderman Glab questioned the hours Pearl Street bridge would be closed. Mayor Jett answered the bridge will be closed for one hour and 15 minutes. Alderman Glab suggested that transportation might be made available for families who want to watch the dyeing of the river. Director Hobson said the committee is considering the use of trolleys, District 156 has agreed to the use of East Campus parking lot for event parking, and the owners of Vickie’s Place and Bimbos are supportive of the event. People will have to be directed to available parking.

Mayor Jett invited the following Public Comment:

Mr. Jerry Kramer asked for the live band hours on Saturday and Sunday. Director Hobson answered 3:00 PM to 11:00 PM on Saturday and Sunday Noon to 6:00 PM.

Mr. Phil Sweeney, McHenry Rotary stated the bagpipe band needs to begin at 2:00 PM instead of 3:00 PM. Director Hobson explained the hours indicated were for amplified music. Mr. Sweeney asked for the balance in the Tourism Fund. Director Lynch answered the fund balance is approximately $400,000.

Motion by Alderwoman Condon, seconded by Alderman Curry to approve a temporary use permit for multiple tents at 1202 Riverside Drive (Miller Point) and live music on Saturday March 17 and Sunday March 18; 2) special event liquor license for the sale of beer, wine, and malt beverages issued to the City of McHenry; 3) permit open carry of alcoholic beverages in plastic cups throughout Green Street and Riverside Drive areas; 4) closure of certain sections of Green Street, Pearl Street, and Riverside Drive from 11:45 AM to approximately 1:00 PM for the St. Patrick’s Day Parade; 5) closure of Pearl Street from Riverside Drive to River Road from 10:00 AM to 1:00 PM during the dyeing of the Fox River; and, 6) Tourism Fund budget amendment not to exceed $25,000 for the McHenry ShamRocks the Fox event.

Voting Aye: Condon, Curry, Schaefer, Santi, Mihevc, Glab, Devine.
Voting Nay: None.
Absent: None.
Motion carried.

DISCUSSION ONLY ITEMS

A. Discussion regarding the LaFarge Gravel Pit Agreements.

Mayor Jett stated that LaFarge/Holcim currently operates sand and gravel mining operations in the City of McHenry under a series of annexation agreements and
conditional use permits that were approved in 1988 and are set to expire in 2018. It is the understanding of staff that LaFarge/Holcim is seeking to extend the expiring conditional use permit on the south side of Route 120 until 2032 and the non-expiring conditional use permit on the north side of Route 120 also until 2032. A variance is also requested to extend the mining operation by four years on the south side until October 2032 so the north and south side mining operations expire at the same time.

Mayor Jett reported he met with Alderman Curry and staff last week to discuss this matter and at this time, wanted to clarify that the scope of the discussion this evening is about extending the mining conditional uses and amendment to annexation agreements relating to Parcels B through E. Parcel A is partially occupied by Meyer’s tenant Curran Contracting and Asphalt Production Company. Meyer’s operational conditional uses from the city’s standpoint include reclamation plans, cost per ton, noise hours and stormwater drainage. Any concerns of the city regarding hours or noise from Curran’s operation of Parcel A including hours operation should be handled separately with Curran Contracting, which will be done by staff with direction from the Council.

Mayor Jett noted the attendance of Randi Willi from LaFarge and Attorney Mark Saladin representing LaFarge and invited Mr. Willi to the podium to address Council’s questions.

Alderman Curry stated in the current annexation agreement for Parcel A, one of the items mentioned is stormwater detention and indicates that it encompasses all parcels A through E; therefore in his opinion this discussion does include Parcel A. Comments he has received from neighboring residents about noise are not all about the asphalt plant in Parcel A. Some were about noise from the south end of the mine and other operations. A number of complaints have also been reported about hours of operation and in many cases, an actual violation notice was not issued. Comments from residents to city staff were somehow determined not to be valid. Alderman Curry said going forward the city needs a verifiable method to determine when the startup happens. Alderman Curry discussed the pages of complaints he has received from residents in his ward since he has been in office. He stated his concerns that no matter the parcel, when the owner is notified of an hours of operation complaint, the response has been a promise to comply in the future adding this is a willful violation. Alderman Curry suggested the city establish in the next agreement hefty fines for violations.

Alderman Curry asked for clarification in the proposed agreement regarding the reclamation bond. Mr. Wille stated there are three $100,000 bonds that are ever green with the city and represent three phases of mining: open, operation, and restoration. In addition, since the operation was acquired from the Millers in 1988, each Parcel in A through E has received surface-mining permits from the IDNR. To achieve the permit, LaFarge is required to post a bond with the State of Illinois for the length of the permit and is not released until the state inspector declares the slopes and vegetation are returned to a state per the requirements. Alderman Curry asked if the amount of the bond is larger for the reclamation at the endpoint as opposed to each individual area.
Mr. Wille stated if mined properly, that would not be necessary. Director Martin stated the city zoning ordinance requires a $2,500/acre bond and the surface mining section of the ordinance allows for substantial requirements for the reclamation plan and other bonding requirements. Alderman Curry commented he is concerned about whether staff is reviewing the ordinance and if the amount of the bond is enough. Director Martin answered the bond amount is $2,500/acre or at such greater amount as established by the city council on a three year basis. Alderman Curry noted staff should review the cost per ton in the agreement, as it seems to be behind the amount for inflation.

Alderman Curry stated residents have expressed concerns about the operation affecting their wells. Mr. Wille stated they are mining 50-60 feet below the surface.

Alderman Curry asked Director Lynch if the city receives records on the amount of sand, gravel and other materials mined as stated in most of the agreements to verify the tons match the payment. Director Lynch stated in the past the city received a report with a check and now only the check is received. Mr. Wille stated the most recent audit report would be available soon.

Alderman Curry noted a provision in the annexation agreement that requires topographical surveys of the completed reclamation areas and asked if the city has received them. Mr. Wille stated in the past, Allen Miller would meet with Inspector Schwalenberg once a year to review aerials not topographical. Alderman Curry noted aerials are also required annually.

Alderman Curry said the past agreements set the hours of operation and noted that the new agreements do not have to set the hours.

Attorney Saladin addressed the Council regarding some of the prior annexation agreements stating that most of those have been rolled into the 1988 agreement. There are really only two annexation agreements to discuss, the 1988 agreement for Parcels, B, C, D, E on the south side of Route 120 and the annexation agreement for the north side. All other previous agreements are expired or have been amended into the 1988 agreement. When questioned by Alderman Curry, Attorney Saladin stated that while the agreement includes provisions for Parcel A, that is only relative to the uses on Parcel A that affect someone totally different than Meyer Material.

Alderman Santi said he firmly believes Lafarge can be a good neighbor and wants to do what is best for all parties. He is not sure how this can be accomplished; there exists a noise issue that is wrapped into hours of operation. There needs to be a resolution in the near future that is agreeable to both parties noting Alderman Curry's suggestion about fines and said that guidelines might have to be established for certain violations. Alderman Santi added he would like the reports to be submitted as required.
Alderman Curry suggested that Alderman Curry convey the complaints he has documented to staff.

Alderman Condon asked if the hours of operation differ from the hours of construction regulated in the city’s ordinance. Director Polerecky stated that the ordinance regulating hours of construction does not apply in I-1 zoning districts as they are regulated by sound levels. Alderman Condon asked if other municipalities with mining operations were contacted and Director Polerecky said he was not aware of any.

Mayor Jett requested comments from the Public.

Mr. Jerry Kramer stated the operations start at 5:00 AM. He lives near Parcel A and hopes a solution can be found to benefit everyone. Mr. Kramer asked Mr. Wille if the trucks enter through the eastern edge to load.

Alderman Glab said he was disappointed that Lafarge was pushing for additional time to mine north of Route 120. He would prefer that the north side be completed, as was the original intent of the agreement.

Alderman Curry said most of the noise complaints he referred to came from residents who live in Martin Woods. However, in response to the email he recently sent out, he received responses from Woodcreek and Glacier Ridge residents who are still complaining about noise.

Mr. Wille asked what time of the day are the residents concerned about because they are not allowed to run their field operations before 6:00 AM, and they do not.

Alderman Curry proposed a 6:00 AM start up time across the board.

Mayor Jett reported that he contacted a smaller local plant and was told they begin operations at 5:30 AM. Mr. Wille stated they open the gates to load trucks at 5:00 AM however, they cannot operate in the field until 6:00 AM. It is imperative that they get their trucks through town before the morning rush hour.

Mr. Wille answered all the stockpiles are up against Route 120 near the main entrance, west of the elementary school. Mr. Kramer said what he hears at 5:00 AM might be the trucks loading. Alderman Curry suggested that Mr. Kramer might be hearing the backup alarms on the frontend loaders. Mr. Wille assured the conveyors are not running at that hour and, they do have the ability to install white noise alarms that meet MSHA regulations.

Director Polerecky added that he is aware that many of the alarms on the trucks at the mine were changed to white noise alarms and city resident Mr. White confirmed in a past email that this issue was resolved to his satisfaction.
Mr. Wille stated that LaFarge wants to be a good neighbor and they will work with the neighbors as much as they can adding they actually close operations on a Friday for a Woodcreek resident’s wedding.

STAFF REPORTS

None.

MAYOR AND CITY COUNCIL COMMENTS

None.

ADJOURNMENT

Motion by Alderman Santi, second by Alderman Devine to adjourn the meeting.

Voting Nay: None
Absent: None.
Motion Carried.

The meeting adjourned at 9:10 PM.

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Mayor                                      Deputy City Clerk

[Signatures]