

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, JANUARY 28, 2013 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

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

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Gatt, Mayor Pro Tem Staudt, Council Members Casey, Fischer, Margolis (absent, excused), Mutch, Wrobel

ALSO PRESENT: Clay Pearson, City Manager
Victor Cardenas, Assistant City Manager
Thomas Schultz, City Attorney

APPROVAL OF AGENDA:

CM-13-01-007 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the Agenda as presented.

Roll call vote on CM-13-01-007	Yeas:	Staudt, Casey, Fischer, Mutch, Wrobel, Gatt
	Nays:	None

PUBLIC HEARING – None

PRESENTATIONS – None

REPORTS:

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

AUDIENCE COMMENT – None

CONSENT AGENDA REMOVALS AND APPROVALS (See items A-I):

CM-13-01-008 Moved by Mutch, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the Consent Agenda as presented.

- A. Approve Minutes of:
1. January 5, 2013 – Special meeting
 2. January 7, 2013 – Regular meeting

- B. Approval of request from Ruchi LLC (d/b/a Mirchi Indian Cuisine) to transfer location of 2012 Class C licensed business from 43317 Grand River, Novi 48375 to 25750 Novi, Suite 101, Novi, MI 48375.
- C. Approval of Pawnbroker License renewal requested by Gary Weinstein, owner of Weinstein Jewelers, 41990 Grand River Avenue.
- D. Approval of a Labor Agreement between the City of Novi and the Full-Time Fire Fighters Association for a term of July 1, 2012 through June 30, 2015.
- E. Approval to exercise the second option for one year contract for banking services with Fifth Third Bank, ending on December 31, 2013, at an estimated annual cost of \$22,500.00.
- F. Approval of a Completion Agreement with Normandy SD, LLC for SP05-003, the Normandy Hills Estates Condominium located north of Eight Mile Road and west of Meadowbrook Road, in accordance with the requirements of Chapter 26.5.
- G. Approval to purchase a Ford F-550 1-Ton dump truck from Signature Ford, Inc., the low bidder, in the amount of \$60,521.
- H. Approval to dispose of three (3) surplus Mobile Data Computers (MDCs) with the intention of providing them to the Orchard Lake Police Department.
- I. Approval of Claims and Accounts – Warrant No. 884

Roll call vote on CM-13-01-008

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

MATTERS FOR COUNCIL ACTION:

- 1. Approval of Resolution for Adoption of the 2013 City of Novi Economic Development Goals & Strategies; and Review of 2012 Economic Development Goals & Strategies.

City Manager Pearson said this is part of the process that worked very well for them the last several years. It is timed after the early input session.

CM-13-01-009

Moved by Staudt, seconded by Casey; CARRIED UNANIMOUSLY:

To approve Adoption of the 2013 City of Novi Economic Development Goals & Strategies; and Review of 2012 Economic Development Goals & Strategies.

Roll call vote on CM-13-01-009

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

2. Approval of City Code amendment 13-134.03 to amend the City of Novi Code of Ordinances at Chapter 7, "Buildings and Building Regulations" Article II, "State Construction Code" in order to add a new Section 7-26 to confirm and provide notice of necessary construction documents and site plan information and establish conditions to be included in permits and certificates issued for towers and wireless communications structures, equipment and facilities. **FIRST READING**

CM-13-01-010 Moved by Mutch, seconded by Wrobel; CARRIED UNANIMOUSLY:

To approve the City Code amendment 13-134.03 to amend the City of Novi Code of Ordinances at Chapter 7, "Buildings and Building Regulations" Article II, "State Construction Code" in order to add a new Section 7-26 to confirm and provide notice of necessary construction documents and site plan information and establish conditions to be included in permits and certificates issued for towers and wireless communications structures, equipment and facilities. FIRST READING

City Manager Pearson said they are updating the ordinances be in compliance with the changes in the Federal and State laws. They still have to have the necessary local reviews.

Roll call vote on CM-13-01-010

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

3. Approval of Zoning Ordinance Text Amendment 18.264 to amend the City of Novi Zoning Ordinance at Article 25, "General Provisions" Section 2511, "Exterior Lighting" in order to require and establish standards for lighting at residential development entrances. **FIRST READING**

City Manager Pearson said this was a referral from Council to look at residential lighting standards somewhat similar to a commercial business. It is to prevent intrusive lighting from one property to another.

Member Mutch felt this amendment is a logical approach to take. Those who develop commercial properties in the City are asked to put in the infrastructure at the time of development but we leave it to the homeowner associations to petition for a street light at the entrance of a residential development. This change will add that requirement for additional street lighting to be done at the time of development so that the burden won't be put on future homeowner's. We have seen a number of subdivisions in the

City still without street lights at their entrances. He said having lighting at the entrances is a matter of public safety.

CM-13-01-011 Moved by Mutch, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the Zoning Ordinance Text Amendment 18.264 to amend the City of Novi Zoning Ordinance at Article 25, "General Provisions" Section 2511, "Exterior Lighting" in order to require and establish standards for lighting at residential development entrances. FIRST READING

Roll call vote on CM-13-01-011 **Yeas: Wrobel, Gatt, Staudt, Casey, Fischer, Mutch**
Nays: None

4. Approval of Zoning Ordinance Text Amendment 18.265 to amend the City of Novi Zoning Ordinance at Article 25, "General Provisions" Section 2508.1, "Commercial Television and Radio Towers, Communication Antennas, Public Utility Microwave Towers, Public Utilities T.V. Transmitting Towers" in order to recognize and provide for implementation of State and Federal legislation regarding wireless communication equipment and facilities. **FIRST READING**

CM-13-01-012 Moved by Casey, seconded by Wrobel; CARRIED UNANIMOUSLY:

To approve the Zoning Ordinance Text Amendment 18.265 to amend the City of Novi Zoning Ordinance at Article 25, "General Provisions" Section 2508.1, "Commercial Television and Radio Towers, Communication Antennas, Public Utility Microwave Towers, Public Utilities T.V. Transmitting Towers" in order to recognize and provide for implementation of State and Federal legislation regarding wireless communication equipment and facilities. FIRST READING

Roll call vote on CM-13-01-012 **Yeas: Gatt, Staudt, Casey, Fischer, Mutch, Wrobel**
Nays: None

5. Approval of resolution to authorize Budget Amendment #2013-3.

Member Fischer noted the additional expenditure was under the Major Street Fund. This was related to some damage from an accident that took place but there has been pursuit of insurance reimbursement. City Manager Pearson said this accident was on New Year's Day at Novi Road and Old Novi Road that sheared off the pole and lighting. He explained the replacement is going to be more than the original cost

because they have to conform to the new standards. Reimbursement will probably be less than what it is costing because the upgrades might as well be done now instead of redoing it again.

CM-13-01-013 Moved by Fischer, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the resolution to authorize Budget Amendment #2013-3.

Roll call vote on CM-13-01-013

**Yeas: Staudt, Casey, Fischer, Mutch, Wrobel,
Gaff
Nays: None**

6. Consideration of a request from Darren Yanke for a variance from Section 11-278(a) of the Design and Construction Standards, which requires pedestrian safety paths to be constructed of concrete, to allow the use of brick pavers for a sidewalk within the public right-of-way. (The subject property occupies parcel number 22-35-280-001 and is located at 41621 Hampshire Street).

City Manager Pearson talked about the background of this issue. The pavers are within the public right of way. The City will be responsible for this in the future and it was done without permits or review. There is no argument that it doesn't look nice, but within the right of way the concrete standard for the City's liability and future maintenance is why we cannot recommend the waiver.

Darren Yanke requested to enter into a hold harmless agreement with the City of Novi to leave the brick pavers in place. A sketch of the construction of the brick pavers was given to the City. The work was overseen by an engineer. During the construction, the suitable soils were tested. He didn't feel that this was out of line and could not be accepted as a right of way pathway for pedestrians. He referred to other areas in the City where brick pavers were used.

City Attorney Schultz explained that there is no hold harmless form for a right of way sidewalk. If Council were implying that it exercises its discretion and grants the variance, he would design the hold harmless agreement for this particular piece of property and agree to indemnify the City in the normal course and look at their insurance to make sure they are properly insured. We can't get rid of the liability, but it allows the City to turn to the property owner for reimbursement if there was a judgment against the City. Member Fischer asked if there were ever any hold harmless agreements. Mr. Schultz said he was not aware of a sidewalk hold harmless arrangement. Sidewalk liability has been a big issue for the courts lately and it is placed on the municipality. Member Fischer asked if there were any hold harmless in general and not for just sidewalks. Mr. Schultz said the City enters into hold harmless agreements with property owners when there are deviations. Member Fischer asked if the brick pavers are in compliance with Americans with Disabilities Act (ADA) resolutions that we have in place. City Engineer, Rob Hayes, explained that if they are all flush, they would be ADA compliant, but if they deflect two inches or more, they would not be. Member

Fischer confirmed that it was possible for us to include in the agreement that the property owner will remain in compliance with ADA. He asked if there was a breakdown in the process. City Manager Pearson said they didn't get a permit for the work, which would have caught it. This is all after the fact. Member Fischer felt anyone would hate to see someone have to redesign and reconstruct what has already been done. It does look very nice. He was inclined to investigate the possibility of the hold harmless as well as, putting very strict requirements to ensure that the aesthetics and compliance with ADA is maintained by the property owner. What is unfortunate with that, it then falls upon the City to inspect it.

Member Wrobel asked if there was any correspondence with the Homeowners' Association and if they had any recommendation for him to do the work. Dr. Hurley, Chase Drive, received approval from the Homeowners' Association for the whole project. One of the issues is that there is confusion between landscapers and homeowners as to what permits need to be pulled. Dr. Hurley stated we rely on the landscapers to pull the appropriate permits and to have the education to understand as to what they need to do. The understanding he had with his landscaper was that they did not need to pull a permit for a driveway. The landscaper has done quite a few driveways in the area and he had relied upon their experience. He thought there was confusion between the landscapers as to what the rules are and with the homeowners who ultimately have the responsibility. They were in a similar situation where they were given a violation this fall for the same occurrence. The driveway is cement but looks very similar to the other project. We are in a situation where we do not know what to do. It looks fabulous and in the future there may be more landscaping done by other neighbors. He felt there should be some clarification. He learned from his experience from Providence Hospital to be very cognizant of the ADA requirements. He said one of the things they did was to educate the physicians about areas that are questionable. There needs to be some communication between the landscapers and the City. There needs to be some educational videos from the attorneys to understand what the requirements are so everyone can be safe. We don't want to go back and undo our landscaping. We will, if it is the safe and right thing to do. We are at a crossroads because we will do the right thing but he thought the intention was to improve the property. Member Wrobel would felt better if there was some correspondence from the Homeowners' Association before he could approve it. He suggested they talk to them.

Member Mutch confirmed that the sidewalk is all in the public right of way. City Manager Pearson noted that landscaping, trees, curb cuts are in the public right of way. Anyone that knows their business knows that you need to have a permit ahead of time before any work is done. Something could have been done that was compliant if they had sought the required permits ahead of time. It would not have been a problem or question. Member Mutch asked if homeowners are allowed to modify the driveway apron. DPS Director/City Engineer Hayes said they are allowed to give them some discretion on the drive approach. In this case it would be a license agreement to cover the brick pavers that are on the drive approach. Member Mutch said that element was a different situation because it only affects those driving in and out from the house versus the public using the sidewalk. He asked for Mr. Hayes' opinion on the

suitability of what was put in place. City Engineer Hayes said he had only seen the photos. Member Mutch was concerned that other neighbors might want to do similar work. If we allow one, we may have other requests. Homeowners want to do these kinds of improvements with an integrated look. What kind of variation does the City allow residents that don't want to have a standard-looking sidewalk? Mr. Hayes said he could not think of any variation beyond color in the ordinance. Perhaps stamped concrete is a possible variation but he would have to examine that in more detail. Member Mutch said it was something that needs to be reviewed since others have it. He said it is a difficult decision because as the City Manager noted, if the landscapers had pulled the appropriate permits, they would have met the appropriate standards but the homeowner relied upon landscapers doing the appropriate work. Council's first priority is protecting the City's position of liability. He asked City Attorney Schultz how to ensure the fines in the future even if the owner sells his property. Mr. Schultz said it would be recorded against the property. Member Mutch said he would want a better understanding of how the hold harmless agreement would work.

Mayor Pro Tem Staudt had two comments; One, he supports what Member Wrobel suggested relative to the Homeowners' Association and, two, that any costs that we incur, for any legal purposes, would be the responsibility of the homeowner. Those were the two conditions he would require so that other people would not expect the City to pay for it if they ask for a hold harmless agreement. He suggested tabling this until some future date.

Member Casey echoed many of the comments. She respected the amount of work Mr. Yanke did improving his property but the most significant concern was if there are more situations like this. She is struggling with the next step because she felt it could open to further challenges in the future.

Mayor Gatt felt landscapers can save money by not pulling permits, if they can get away with it. It is incumbent on the homeowner. The problem is it doesn't comply with our ordinance. The ordinance is there for a safety reason. For him it is not a tough decision. If we allow this homeowner, we will be inundated with people who want hold harmless agreements because they didn't know. He thought if this was allowed to go forward, it is like opening Pandora's Box. What the Homeowners' Association has to say doesn't concern him. The Homeowners' Association doesn't make the laws. It is tough to tell a homeowner no when he has already done the work. A hold harmless agreement is only as good as the property owner who agrees to it. He will not support tabling it or any research later on it. He said the homeowner has to comply with the ordinance.

Dr. Hurley asked if the issue was the permit or pavers. Mayor Gatt answered that the issue is the sidewalk portion that was done.

Member Fischer echoed what Mayor Gatt had said. He had worked in an industry where permits are required in many cities for fences. It was up to the business to know the laws but the homeowner is responsible. He hopes everyone in the City learns from this example.

CM-13-01-014 Moved by Fischer, seconded by Mutch; MOTION FAILED: 3-3

To table for a future meeting the consideration of a request from Darren Yanke for a variance from Section 11-278(a) of the Design and Construction Standards, which requires pedestrian safety paths to be constructed of concrete, to allow the use of brick pavers for a sidewalk within the public right-of-way. (The subject property occupies parcel number 22-35-280-001 and is located at 41621 Hampshire Street). Tabled to acquire documentation for approval of the project from the Homeowner's Association, acquire additional information from the City Attorney in regards to hold harmless agreements, liability, ensuring ADA compliance, and transferring legal fees to homeowner for this issue and for any future requests.

Mayor Pro Tem Staudt said he would like to see a letter from the landscaper explaining their premise for not getting a permit. The homeowner may have some recourse against the landscaper.

Mr. Yanke said he did the landscaping himself as he was the owner of the company and the homeowner. The reason it occurred was because three kids burned his truck to the ground and did damage to his property in July. After three or four weeks of looking at the damage to his driveway, he took it upon his own risk to complete the driveway to the street because he saw other residences with it done. Mayor Pro Tem Staudt asked if he generally got a permit for it in other communities, if he does it for a living. Mr. Yanke said a permit is not required for the driveway itself. Mayor Pro Tem Staudt asked about the sidewalk he tore out. Mr. Yanke said he did take it upon himself to do it because he saw it at other houses in Novi.

City Manager Pearson said some kind of estimate has to be developed before we go back to this issue or should we do these requests with a new legal estimate ahead of time. When a developer does a project, there is an estimate done and the escrow is put up front. The fees are put up front before they are incurred.

Roll call vote on CM-13-01-014

Yeas: Fischer, Mutch, Wrobel

Nays: Casey, Gatt, Staudt

CM-13-01-015 Moved by Staudt, seconded by Casey; MOTION CARRIED: 4-2

To deny the consideration of a request from Darren Yanke for a variance from Section 11-278(a) of the Design and Construction Standards, which requires pedestrian safety paths to be

constructed of concrete, to allow the use of brick pavers for a sidewalk within the public right-of-way. (The subject property occupies parcel number 22-35-280-001 and is located at 41621 Hampshire Street).

Member Casey confirmed that a time to replace the pavers was not needed to be included in the motion.

Roll call vote on CM-13-01-015

Yeas: Wrobel, Gatt, Staudt, Casey

Nays: Fischer, Mutch

7. Approval of request from Ortagu, Inc. (d/b/a El Mariachi Mexican Restaurant) to transfer ownership of escrowed 2012 Class C and SDM Licensed Business with Sunday Sales Permit (PM) from T & C Restaurant LLC to 31150 Novi Road, Novi, MI 48377.

City Manager Pearson said that there weren't any quota licenses available when it came before Council. The owner has returned and has a transfer license. There are no objections from staff.

Member Fischer requested that Council consider reimbursing the applicant for the \$250 application fee.

CM-13-01-016 Moved by Fischer, seconded by Mutch; CARRIED UNANIMOUSLY:

To approve the request from Ortagu, Inc. (d/b/a El Mariachi Mexican Restaurant) to transfer ownership of escrowed 2012 Class C and SDM Licensed Business with Sunday Sales Permit (PM) from T & C Restaurant LLC to 31150 Novi Road, Novi, MI 48377 and request the City Administration reimburse the reapplication fee of \$250.

Mayor Pro Tem Staudt confirmed with City Attorney Schultz as to whether Council has any input on the transfer of a liquor license and whether the Liquor Control Commission no longer considers this a part of the process. City Attorney Schultz said the Liquor Control Commission says that it will issue licenses after input from the City, not necessarily approval. The City still has an ordinance that requires approval. Mayor Pro Tem Staudt noted that we have an ordinance that contradicts State law. City Attorney Schultz said the ordinance contradicts a new Administrative interpretation of an existing State Law. Mayor Pro Tem Staudt noted that the purpose of this was to fulfill our current ordinance and doesn't have any bearing on the Liquor Control. City Attorney Schultz said it may not have any bearing on what the Liquor Control Commission (LCC) does but it will have a bearing on what the City Staff does in terms of occupancy permits and things like that. Mayor Pro Tem Staudt supports the \$250 waiver and will consider the rest. He asked if they will continue to come in this manner. Mr. Schultz said he thought that if the ordinance isn't changed, they will continue to go through the transfer approval process and let the LCC do what they are going to do. Mayor Pro

Tem Staudt asked if we will continue to charge for the transfer request. Mr. Shultz said it will part of the discussion on the memo Council requested, which will be forth coming.

Member Mutch echoed some of the comments. He thanked Mr. Ortega for his diligence in acquiring the license on a timely basis.

Roll call vote on CM-13-01-016

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

AUDIENCE COMMENT – None

COMMITTEE REPORTS - None

MAYOR AND COUNCIL ISSUES - None

CONSENT AGENDA REMOVALS FOR COUNCIL ACTION – None

COMMUNICATIONS - None

ADJOURNMENT – There being no further business to come before Council, the meeting was adjourned at 7:48 P.M.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Transcribed by Jane Keller

Date approved: February 11, 2013