

UNAPPROVED

October 9, 2006

A regular meeting of the City Council was held on Monday, October 9, 2006, at 7:00 p.m. in the Council Chambers of City Hall. Mayor Johnson presided. The Pledge of Allegiance to the Flag was recited in unison.

Councilmen present: Thomas Adams, Bruce Johnson, Hollis McKeag, James Myers, Joseph Rokosz
Councilmen absent: None

CONSIDERATION OF ADOPTING CONSENT AGENDA ITEMS

Councilman McKeag removed Item 9 from consent agenda.

MINUTES

Approval of the minutes of the September 25, 2006 special and regular meetings was offered by Councilman Myers and seconded by Councilman McKeag. (Motion ADOPTED.)

COMMUNITY READ TIME

Communications Coordinator Libby Richart introduced Library Board Member Ann Heard who spoke regarding Community Read Time, October 9 – November 9, 2006. The following resolution was then offered by Councilman Rokosz and seconded by Councilman Myers:

RESOLVED, that the Mayor is authorized to issue the attached proclamation designating October 9 through November 9, 2006, as Community Read Time in Midland. (Motion ADOPTED.) Mayor Johnson then presented the proclamation to Ann Heard.

DOW CHEMICAL COMPANY IFT APPLICATION

City Assessor Reid Duford presented a request from The Dow Chemical Company for an Industrial Facilities Exemption Certificate within the Michigan Division Dow Chemical Company Plant Rehabilitation District No. 1, relating to facility upgrades to both real and personal property within the METHOCEL Manufacturing Plant. Midland Tomorrow Executive Director Scott Walker spoke regarding the economic development benefit of this project to the Midland community and encouraged Council to support the tax exemption request. Vice President of Dow's Michigan Operations David Dupre spoke regarding the METHOCEL Manufacturing Plant project and asked for Council's favorable consideration of the exemption request. A public hearing opened at 7:23 p.m., recognizing no public comments, the hearing closed at 7:23 p.m. The following resolution was then offered by Councilman McKeag and seconded by Councilman Adams:

WHEREAS, the Michigan Division Dow Chemical Company Plant Rehabilitation District No. 1 was established by resolution of the Midland City Council on September 25, 1978; and

WHEREAS, The Dow Chemical Company made an application dated August 30, 2006, which was received by the City Clerk on August 31, 2006, for an Industrial Facilities Exemption Certificate relating to approval of a new facility within said District; and

WHEREAS, the application for the certificate is for approval of a new facility with the total project cost of \$57,500,000, which includes \$50,108,932 in new personal property and \$7,391,068 in real property improvements with the same being located within the Michigan Division Dow Chemical Company Plant Rehabilitation District No. 1 to allow The Dow Chemical Company to make facility upgrades to both real and personal property to add approximately 13 million pounds of additional manufacturing capacity to the METHOCEL manufacturing plant in Midland; and

WHEREAS, the City Council, by written notice, afforded the applicant, the City Assessor, and representatives of each affected taxing unit an opportunity for a hearing on October 9, 2006, as

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required by Public Act 198 of Public Acts of the State of Michigan of 1974, as amended, and has given due consideration to all information presented; and

WHEREAS, the application appears to comply with the requirements set forth in Section 9 of said statute, as amended, in that the proposed facility is located within a plant rehabilitation district that was duly established within the City of Midland with the City of Midland being eligible under said statute to establish such a district and with the district having been established upon a request before the commencement of the restoration, replacement or construction of the facility described herein; that the commencement of this project did not occur earlier than six months before the filing of the application for the industrial facilities exemption certificate, that the application relates to a construction, restoration or replacement program that when completed constitutes a new or replacement facility within the meaning of said statute and is situated within a previously established plant rehabilitation district that was established in the City of Midland which was itself eligible under the statute to establish the district; that completion of the facility is calculated to, and will at the time of the issuance of the certificate, have the reasonable likelihood to create employment, retain employment, prevent a loss of employment or produce energy in the community; now therefore

RESOLVED, that the City Council of the City of Midland finds and determines that the granting of the industrial facilities exemption certificate requested by The Dow Chemical Company considered together with the aggregate amount of industrial facilities exemption certificates previously granted and currently in force, shall not have the effect of substantially impeding the operation of the City of Midland or impairing the financial soundness of any other taxing unit which levies an ad valorem property tax in the City of Midland; and

RESOLVED FURTHER, that said application for an Industrial Facilities Exemption certificate from The Dow Chemical Company for a new facility approval within the Plant Rehabilitation District be and the same is hereby approved for a period of 12 years "after completion"; and

RESOLVED FURTHER, that the Mayor and City Clerk are authorized to execute the Public Act 198 Agreement submitted between the City and The Dow Chemical Company pursuant to P.A. 334 of Public Acts of the State of Michigan of 1993. (Motion ADOPTED.)

PUBLIC COMMENTS

Debra Rogers, Executive Director for the Midland Conservation District spoke regarding the Sturgeon Creek Watershed Project and the positive partnership with and benefits to the City of Midland.

GENERAL RECREATION FEES ORDINANCE AMENDMENT (1ST reading)

Department of Public Services Director Martin McGuire presented the first reading of an ordinance amendment to increase fees associated with picnic reservations. Introduction and first reading of the following ordinance amending General Recreation fees was then offered by Councilman McKeag and seconded by Councilman Adams:

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF MIDLAND, MICHIGAN, BY AMENDING SECTION 21-73 (14) OF DIVISION 4 OF ARTICLE II OF CHAPTER 21 THEREOF.

The City of Midland Ordains:

Section 1. Section 21-73 (14) of Division 4 of Article II of Chapter 21 is amended to read as follows:

Sec. 21-73. General recreation fees
(14)* Picnic shelter reservations

Emerson A-1, Emerson E	\$ 20.00	\$ 25.00	per use
Plymouth A (south), A (north), B-2, B-3	\$ 20.00	\$ 25.00	per use
Barstow Woods	\$ 20.00	\$ 25.00	per use
Stratford Woods	\$ 20.00	\$ 25.00	per use

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Chippewassee	\$ 20.00	\$ 25.00	per use
Emerson D	\$ 40.00	\$ 45.00	per use
Plymouth A (entire shelter)	\$ 50.00	\$ 55.00	per use
Unsheltered areas	\$ 40.00	\$ 15.00	per use
Addition of a canopy	\$ 20.00	\$ 25.00	per use
Delivery of picnic tables (up to 10 tables)	\$ 20.00	\$ 25.00	per use
Additional tables (if available)	\$ 3.00		per table

*Note: Fees paid for shelter reservations are non-refundable.

Exceptions to (14) Picnic shelter reservation fees are as follows:

- a) Donors of shelters shall be allowed one rent free use per year in the respective donated structure.
- b) Daytime reservations which begin after 8:00 a.m. and end before 3:00 p.m. Monday – Friday in May and June are exempt from fees.

Section 2. This Ordinance shall take effect upon publication. (Motion ADOPTED. Considered first reading. Yeas: Adams, Johnson, Rokosz Nays: McKeag, Myers)

2005-2006 LIBRARY STATISTICS AND SERVICES REPORT

Grace A. Dow Memorial Library Director Melissa Barnard presented a report on library statistics and services for 2005-06. The following resolution was then offered by Councilman Rokosz and seconded by Councilman McKeag:

WHEREAS, City staff has prepared a report in response to a decrease in circulation and gate count at the Grace A. Dow Memorial Library for fiscal year 2005-2006; now therefore RESOLVED, that the report presented on the Grace A. Dow Memorial Library is hereby accepted and ordered placed on file in the Office of the City Clerk. (Motion ADOPTED.)

2005-2006 CABLE ACCESS ADVISORY COMMISSION ANNUAL REPORT

The following resolution was offered by Councilman Myers and seconded by Councilman McKeag:

WHEREAS, the Cable Access Advisory Commission has submitted an annual report for fiscal year 2005/2006 in accord with Article I of Chapter 15 of the Midland Code of Ordinances; and WHEREAS, the Cable Access Advisory Commission has identified in the annual report activities that are in compliance with the duties defined in the ordinance; now therefore RESOLVED, that the 2005/2006 Annual Report of the Cable Access Advisory Commission be accepted. (Motion ADOPTED.)

CABLE ACCESS ADVISORY COMMISSION – BROWN APPOINTMENT

The following resolution was offered by Councilman Myers and seconded by Councilman McKeag:

RESOLVED, that Jason Brown is hereby appointed to the Cable Access Advisory Commission as a Media Professional to fill a term to expire June 30, 2009. (Motion ADOPTED.)

LICENSE AGREEMENT – ASHMAN COURT HOTEL RENOVATION

City Engineer Brian McManus presented a license agreement for a right-of-way encroachment along Main Street, Gordon Street and Ashman Street near the Ashman Court Hotel. Downtown Development Authority Executive Director Christin O'Callaghan spoke regarding the project and encouraged Council support of granting the right-of-way encroachment. Joan Cleland, representing MVCC Partnership Ltd., spoke regarding the proposed project. Sandy Eads, Principal with HOK Venue, presented plans and architectural renderings of the project. The

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following resolution was then offered by Councilman Myers and seconded by Councilman McKeag:

WHEREAS, representatives of MVCC Limited Partnership located at 111 W. Main Street desire to renovate their site by the development of building additions; and
WHEREAS, the development does not currently encroach in the City right-of-way; and
WHEREAS, the proposed renovation creates an encroachment along W. Main Street, Gordon and Ashman Streets; now therefore
RESOLVED, that the proposed encroachments along W. Main Street, Gordon Street, and Ashman Street are approved per the license agreement with MVCC Limited Partnership; and
RESOLVED FURTHER, that the Mayor and City Clerk are hereby directed to execute the license agreement with MVCC Limited Partnership on behalf of the City of Midland; and
RESOLVED FURTHER, that this recognition of encroachment does not authorize the property owner to expand or enlarge the encroachment in the future beyond the dimensions provided in the related plan, and that the property owner has no claims to City street right-of-way property. (Motion ADOPTED.)

GIFT – RESTROOM AT STURGEON ROAD BASEBALL FACILITY

Department of Public Services Director Martin McGuire presented information on the gift from Northwest Little League of a restroom facility at the City's baseball facility on Sturgeon Road. The following resolution was then offered by Councilman Myers and seconded by Councilman McKeag:

WHEREAS, the Northwest Little League has offered the gift of a restroom facility to the City to be built at the City's baseball complex on Sturgeon Road; and
WHEREAS, the Parks and Recreation Commission, at their meeting of Sept. 5, 2006, voted unanimously to recommend that the City Council accept the gift; now therefore
RESOLVED, that the City hereby accepts the offer of the Northwest Little League to build a restroom facility at the City's baseball complex on Sturgeon Road. (Motion ADOPTED.)

TRAFFIC CONTROL ORDER S-06-01

The following resolution was offered by Councilman Myers and seconded by Councilman McKeag:

RESOLVED, that Traffic Control Order No. S-06-01 filed August 3, 2006 pursuant to Chapter 24 of the Code of Ordinances to establish traffic control as follows:

That Airport Road shall stop for Stark Road.
is hereby made permanent. (Motion ADOPTED.)

CONTRACTED LEGAL SERVICES – MCV TAX APPEAL

The following resolution was offered by Councilman Myers and seconded by Councilman McKeag:

WHEREAS, the Midland Cogeneration Venture (MCV) appealed the 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005 and 2006 assessments and taxable values of certain property it owns in the City of Midland to the Michigan Tax Tribunal; and
WHEREAS, the law firms of Braun, Kendrick, Finkbeiner, P.L.C. and Westrate and Thomas, P.C., formerly known as Westrate and Holmstrom, P.C., have been utilized in assisting the City of Midland in its legal defense of said appeal; and
WHEREAS, on June 27, 2005, Council authorized payments to Braun, Kendrick, Finkbeiner, P.L.C. and Westrate and Thomas, P.C. for the aforementioned services in a total amount not to exceed \$5,750,000; and

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WHEREAS, the cost of continuing said services is expected to exceed the previously approved amount and therefore approval of the City Council is required under Section 2-18 of the Code of Ordinances; and

WHEREAS, sufficient budgetary funding exists within the 2006-2007 Legal Fees budget for the MCV tax appeal cases; now therefore

RESOLVED, that the above-referenced services are hereby determined to be professional services within the meaning of Section 2-19 of the Code of Ordinances and do not require sealed proposals; and

RESOLVED FURTHER, that authorization for payment to the law firms of Braun, Kendrick, Finkbeiner, P.L.C. and Westrate and Thomas, P.C. for their assistance in connection with the aforementioned appeal is hereby increased to an amount not to exceed \$5,950,000. (Motion ADOPTED.)

ARTICULATED LOADER PURCHASE

The following resolution was offered by Councilman Myers and seconded by Councilman McKeag:

WHEREAS, sealed proposals were advertised and received in accord with Article II of Chapter 2 of the Midland Code of Ordinances for the purchase of an Articulated Loader, Bid No. 2959; and

WHEREAS, sufficient funding for the articulated loader is included in the 2006-07 Equipment Revolving Fund budget for Capital Outlay; now therefore

RESOLVED, that the Purchasing Agent is authorized to issue a purchase order to Michigan CAT of Saginaw, Michigan in the net amount of \$101,890 for the purchase of an articulated loader including an option of a limited slip differential and the trade-in of City equipment number 6-46 in accordance with the proposal and City specifications. (Motion ADOPTED.)

SNOW AND ICE CONTROL SALT PURCHASE

The following resolution was offered by Councilman Myers and seconded by Councilman McKeag:

RESOLVED, that upon the recommendation of the administration, the City Purchasing Agent is authorized to requisition and issue purchase orders for snow and ice control salt through the State of Michigan Extended Purchasing Program for prices to be determined by a competitive bidding system in a total amount not to exceed the 2006-07 budgeted sum for this purpose. (Motion ADOPTED.)

PROPOSED 2006-07 WATER FUND BUDGET AMENDMENT

The following resolution was offered by Councilman Myers and seconded by Councilman McKeag:

RESOLVED, that in accord with Section 11.6 of the Charter of the City of Midland, a public hearing shall be conducted at 7:00 p.m. on Monday, October 23, 2006, in the Council Chambers of City Hall on the proposal to amend the 2006/07 Water Fund budget to increase revenues from sale of industrial water by \$60,000.00 and to increase appropriations for Water Treatment Plant Maintenance - Industrial by \$60,000.00. (Motion ADOPTED.)

Being no further business the meeting adjourned at 9:15 p.m.

Selina Tisdale, City Clerk

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October 16, 2006

A special meeting of the City Council was held on Monday, October 16, 2006, at 6:00 p.m. in Conference Room B in City Hall. Mayor Johnson presided.

Councilmen present: Thomas Adams, Bruce Johnson, James Myers, Joseph Rokosz
Councilmen absent: Hollis McKeag

CLOSED SESSION

The following resolution was offered by Councilman Myers and seconded by Councilman Adams:

RESOLVED, that in accord with Section 8(e) of Public Act 267 of the Public Acts of the State of Michigan of 1976, as amended, and upon adoption of this resolution by at least four affirmative votes of the City Council, the City Council shall immediately adjourn to a closed session to consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, specifically The Dow Chemical Company vs. City of Midland and Midland Cogeneration Venture Limited Partnership vs. City of Midland, which, if discussed at an open meeting, would have a detrimental financial effect on the litigating or settlement position of the public body. (Motion ADOPTED by a Roll Call Vote.)

Being no further business the meeting adjourned to a closed session at 6:03 p.m.

John E. Duso, Deputy City Clerk