

**COMMON COUNCIL PROCEEDINGS**  
**October 19, 2010**

The meeting was called to order at 7:05 PM by Councilman-at-large Dolce followed by the Pledge of Allegiance.

Councilman-at-large Dolce asked everyone to remain standing to offer a moment of silence for retired Dunkirk Police Officer Charles Graves who passed away this week.

Present: Councilmen Michalski, Muldowney, Councilwomen Floramo, Szukala and Councilman-at-large Dolce.

Also present: Mayor Frey, City Attorney Cerrie, Public Works Director Gugino, City Treasurer Woods, Fiscal Affairs Officer Curtin, Building Inspector Zurawski, Clerk, Board of Assessors Mleczko, Director of Development Ahlstrom, Personnel Administrator Heyden, Fire Chief Ahlstrom and Police Chief Ortolano.

**RESOLVED:** That the reading of the minutes of Tuesday, October 5, 2010 be dispensed with.

Motion by Councilman Muldowney to accept the minutes as presented. Seconded by Councilwoman Floramo.

Carried, all voting aye.

**PUBLIC COMMENTS:**

Minda Rae Amiran, 17 Lowell Place, Fredonia, New York, representing the League of Women Voters thanked Mayor Frey for arranging last week's meeting (October 13<sup>th</sup>) with County Executive Edwards. She further stated that the meeting was productive, many said what was on their mind, and hoped that County Executive Greg Edwards heard what was said by the people. Ms. Amiran asked the Council to follow-up with Mr. Edwards and not to let this issue of having DSS services returned to the City of Dunkirk fall off the County's agenda; stating that 2 days a week of services in the City is not acceptable.

Janice Slaton, 161 King Street, Dunkirk, New York, stated that during last weeks meeting County Executive Edwards indicated that it was not fiscally sound to return DSS services back to Dunkirk; Ms. Slaton asked the Mayor and Department of Development if they are running their own figures. Ms Slaton advised that she broke down County Executive Edwards figures, and stated that according to her breakdown, each county worker was servicing an average of 3 clients per day. Ms. Slaton reiterated that she hoped that the City of Dunkirk and Department of Development were running their own numbers.

**COMMUNICATIONS FROM THE MAYOR INCLUDING DISAPPROVAL MESSAGES:**

Mayor Frey had nothing to report at this time.

**COMMUNICATIONS FROM THE PUBLIC AND PETITIONS:**

Petition from St. Elizabeth Ann Seton Catholic Youth Organization requesting to use the corners of Central Avenue and Millard Fillmore Drive, Central Avenue and Fourth Street and Main Street and Lake Shore drive on Saturday November 27<sup>th</sup> from 10:00 AM to 2:00 PM for their "Fill the Stocking" drive.

Councilwoman Szukala motioned to accept this petition with the stipulation that several locations be changed per the City's Fundraising Streets Policy. Seconded by Councilwoman Floramo.

Carried, all voting aye.

Notice of Claim from Carmen Hernandez, Jadiel Agosto, Joseph Hernandez, and Carlos Hernandez for personal injuries, and illnesses sustained allegedly while residing at 47-49 W. Courtney Street Apt. 5.

Councilman Michalski moved to refer this to the City Attorney. Seconded by Councilwoman Floramo.

Carried, all voting aye.

**REPORTS OF STANDING COMMITTEES, BOARDS AND COMMISSIONS:**

Councilman Michalski had nothing to report at this time.

Councilman Muldowney inquired about the status of the Zero-Sort Recycling Program, as he noticed residents were still placing cardboard out with their regular trash collection.

DPW Director Gugino advised that 7.1 tons of Zero-Sort Recyclables was collected the first week and 6.74 tons of Zero-Sort Recyclables was collected yesterday resulting in a savings of \$264.00. He stated that \$1000.00 was spent on advertisement via the newspaper, and radio, but that it was premature to draw assumptions from these figures as this program is just getting started. DPW Gugino advised that education is the key to this program and stated that eventually cardboard will not be collected with the regular trash.

Councilwoman Szukala advised that with the upcoming Dog/Cat Census households will be tagged with a Zero-Sort door hanger flyer which will list what recyclable's can be placed out along with a 2011 pick-up schedule. Councilwoman Szukala advised that this is part of the education process.

Councilwoman Floramo advised that she would like to make a correction to the Common Council meeting minutes of September 21, 2010. Councilwoman Floramo advised that she misspoke, and forgot to insert the word County before the word meeting when speaking in regard to the DSS and County meetings, and that she did not specify County meeting when she spoke.

Councilwoman Floramo advised that the next Personnel Meeting will be held this Thursday, October 21<sup>st</sup> at 6:00 PM in the conference room.

Councilwoman Floramo advised that she will be going away for a few days to leave any messages on her cell phone at 410-3376.

Councilwoman Floramo advised that something needs to be done about the safety in this community as there still is a problem with Washington Park. She further stated that there still are no signs for the park and that a man was recently robbed in that park. Councilwoman Floramo read the hours for all the parks in the City, and stated that she would like signs indicating the closing hours of Washington Park since that park closes earlier than the other parks in the City.

Police Chief Ortolano stated that he did not hear Councilwoman Floramo and asked her to repeat her comment. Police Chief Ortolano stated that the City Charter lists the closing hour of Washington Park to be 9:00 PM, and advised that there is walking patrol in that park every half hour.

DPW Director Gugino stated that with the cooperation of National Grid new lighting was installed in the park with higher voltage lamps 1 ½ years ago, and that tree limbs were trimmed.

Councilwoman Szukala asked City Attorney Carrie if there is an update on the Verizon proposal to use the communication tower.

City Attorney Carrie advised that Verizon has reached out to the City to use the tower on a lease program, but has not come forward with a dollar amount, and a walk through on site will be done with Verizon to make sure that it's something that they are interested in. City Attorney Carrie further stated that we have not moved forward with this because there has been another offer to purchase the rights of a cash lump sum dollar amount, and that it is not feasible to negotiate with one company in selling the rights, then negotiate with another company to sell all our rights, so he's waiting to see what the lump sum figure will be.

Councilwoman Szukala advised residents that there will be City wide curbside pumpkin pick-up on Tuesday, November 2<sup>nd</sup> and to look for more details in the newspaper.

Councilwoman Szukala spoke in regard to Councilwoman Floramo signs for the park, suggesting that the park group use money they've raised to purchase signs for the park, and DPW Director Gugino can install the signs.

Councilwoman Floramo advised Councilwoman Szukala that this is a small group, and that it has no money for signs.

Councilman-at-large Dolce advised that replacing street signs should also be looked at in the future, as some signs are faded.

Councilman-at-large Dolce advised that the budget will be received on Friday, he will be sending out letters to all department heads, and that he will follow the practice that was started by Mr. Muscato; if the departments heads want to attend and state their case the Council will meet with them, if they do not, then the Council would not meet with them. Councilman-at-large Dolce further advised that he will speak with the Council in regard to meeting nights, with the possibility of meeting on Saturdays to work on the budget.

**UNFINISHED BUSINESS:**

Resolution #68-2010 authorizing lease with County of Chautauqua for an extended term for the Dunkirk Fireman's Training Grounds.

Councilwoman Szukala motioned to remove this Resolution from the table. Seconded by Councilwoman Floramo

Carried, all voting aye. Removed.

Councilman-at-large Dolce thanked City Attorney Cerrie, and Fire Chief Ahlstrom for providing the Council with copies of the lease.

Vote on Resolution:

Carried, all voting aye.

**PRE-FILED RESOLUTIONS:**

**RESOLUTION #70-2010**  
**October 19, 2010**

**By Councilwoman Szukala:**

**AWARDING BID FOR YEAR 2011 REQUIREMENTS OF TREATMENT CHEMICALS  
FOR THE  
WATER POLLUTION CONTROL AND WATER TREATMENT FACILITIES**

**WHEREAS**, sealed bids for the furnishing of water and wastewater treatment chemicals were opened and read aloud in the Dunkirk City Clerk's Office at 10:00 a.m. on Thursday, October 7, 2010, and have been reviewed by Public Works Director Gugino, now, therefore, be it

**RESOLVED**, that the following bids be accepted for furnishing 2011 water and wastewater treatment chemicals:

| <b><u>Cost</u></b> | <b><u>Bidder</u></b>                                 | <b><u>Item</u></b>           |                      |
|--------------------|--|------------------------------|----------------------|
|                    | Kemira Water Solutions, Inc.                         | Poly-Aluminum Chloride (PAC) | \$800.00 per dry ton |
|                    | 3211 Clinton Parkway Court<br>Lawrence, Kansas 66047 | Ferric Chloride Solution     | \$269.00 per dry ton |

|  |   |          |         |
|--|---|----------|---------|
| JCI Jones Chemicals, Inc.  | Liquid Chlorine (WPCF)                  |          |         |
|  |   | \$484.00 | per ton |
| 100 Sunny Sol Blvd.  | Liquid Chlorine (WTP)                   |          |         |
|  |   | \$484.00 | per ton |
| Caledonia, NY 14423  | Liquid Chlorine (WTP 1500# in cylinder) | \$484.00 | per ton |
| Mercer Lime and Stone Company<br>net dry ton<br>560 Branchton Road<br>Slippery Rock, PA. 16057 | Hydrated Lime (Bulk)                    | \$175.45 | per     |

and, be it

further

**RESOLVED**, that the Mayor is authorized and directed to execute any and all documents, on behalf of the City of Dunkirk, with each of the above-named vendors, for the purchase of such treatment chemicals for the Water Pollution Control and Water Treatment Facilities, and, be it finally

**RESOLVED**, that the City Clerk is hereby authorized to return the bid deposits of the bidders in accordance with the contract specifications.

Councilwoman Floramo thanked DPW Gugino for listing costs and number of bids received, stating that it is important to the Council.

Carried, all voting aye.

**RESOLUTION #71-2010**

**October 19, 2010**

**By Councilwoman Szukala:**

**AWARDING 2011 SLUDGE AND GRIT HAULING AT THE  
DUNKIRK WATER POLLUTION CONTROL FACILITY**

**WHEREAS**, sealed bids for 2011 hauling of sludge and grit from the City Water Pollution Control Facility were opened and read aloud in the Dunkirk City Clerk's Office at 10:00 a.m. on Thursday, October 7, 2010, with two (2) bids being received, now, therefore, be it

**RESOLVED**, that the following low bid for 2011 Sludge & Grit Hauling only is accepted:

Bestway Container Service  
202 East Main Street  
Fredonia, New York 14063

Item 1 – Sludge Hauled to Ellery \$ 10.98 per ton

Item 2 – Grit Hauled to Ellery \$ 30.00 per ton

and, be it

further

**RESOLVED**, that the Mayor is authorized and directed to execute any and all documents, on behalf of the City of Dunkirk, for the Year 2011 Sludge and Grit Hauling, and, be it finally

**RESOLVED**, that the City Clerk is hereby authorized to return the bid deposits of the bidders in accordance with the contract specifications.

Carried, all voting aye.

**RESOLUTION #72-2010**  
**OCTOBER 19, 2010**

**BY: COUNCILMAN MICHALSKI**

**AUTHORIZING THE END OF TAX CERTIORARI LITIGATION BETWEEN  
NATIONAL GRID AND THE CITY OF DUNKIRK**

**WHEREAS**, the City of Dunkirk's City Code contains a provision imposing local Gross Receipts Taxes ("Local GRT") pursuant to General City Law §20-b on certain purchases of certain commodities; and

**WHEREAS**, when a customer purchases the commodity from an Energy Supply Company ("ESCO"), the commodity is sold by an ESCO, whereas the delivery service is provided by National Grid; and

**WHEREAS**, in every electric ESCO transaction and in almost every natural gas ESCO transaction, it is National Grid's position that the sale of the commodity to the consumer occurs outside the City of Dunkirk boundaries; and

**WHEREAS**, National grid and the City of Dunkirk dispute whether Local GRT applies to the delivery portion of ESCO transactions; and

**WHEREAS**, in December 2008 National Grid requested refunds of what National Grid considers to be improperly remitted Local GRT which was attributable to delivery of commodities purchased from ESCOs; and

**WHEREAS**, effective December 2008, National Grid recalculated its reportable revenues and discontinued what National Grid considers to be mistaken and improper payment of Local GRT on the delivery portion of ESCO transactions; and

**WHEREAS**, National Grid's Tariff leaves in effect in December 2008, did not permit National Grid to recover taxes on the delivery portion of ESCO transactions and, as such, did not remit such payments to local municipalities; and

**WHEREAS**, National Grid's Amended Tariff leaves were approved effective December 1, 2009, permitting National Grid to collect Local GRT on the delivery portion of ESCO transactions; and

**WHEREAS**, effective December 1, 2009, National Grid's Electric and Gas tariffs, permit it to collect Local GRT on the delivery portion of ESCO transactions. National Grid is currently collecting such taxes and National Grid is subsequently remitting such taxes "under protest" beginning with the first quarterly payment due in 2010; and

**WHEREAS**, National Grid and the City of Dunkirk seek to resolve all issues concerning the applicability, assessment, collection and/or payment of the City of Dunkirk's assessment of Local GRT on the delivery portion of natural gas and electricity ESCO transactions; and

**WHEREAS**, the Common Council has determined that the proposed Settlement Agreement is in the best interests of the City; now, therefore, be it

**RESOLVED**, that the Common Council does hereby accept the proposed Settlement Agreement for the tax certiorari proceeding filed by National Grid for the period from September 1, 2005 to August 31, 2008; and, it is further

**RESOLVED**, that the Common Council does hereby adopt this resolution to end the litigation between National Grid and the City of Dunkirk as to the above referenced assessment; and, it is finally

**RESOLVED**, that the Mayor is hereby authorized and directed to execute any and all documents related to the above referenced assessment.

Mayor Frey thanked and complimented City Attorney Carrie for his work on resolving this matter on behalf of the City.

Carried, all voting aye.

**By: COUNCILWOMAN SZUKALA**

**AUTHORIZING CAT/DOG CENSUS FOR CITY OF DUNKIRK**

**WHEREAS**, the City of Dunkirk has not had a Cat/Dog Census for over ten (10) years; and

**WHEREAS**, licensing and rabies vaccinations are required by law for dogs, and rabies vaccinations are required by law for cats; and

**WHEREAS**, in order to determine how many cats/dogs there are in the City, it will be necessary to arrange for someone to take on this project; and

**WHEREAS**, the City Animal Control Officer does not have time to conduct such a census; and

**WHEREAS**, the fraternity of TAU KAPPA EPSILON, Campus Center, Fredonia State University, Fredonia, New York, has offered to conduct such census as a group for a donation of \$500.00 to the fraternity; and

**WHEREAS**, as the fraternity TAU KAPPA EPSILON is conducting the Cat/Dog Census, they will be handing out educational material on the newly implemented Zero-Sort Recycling program; now, therefore, be it

**RESOLVED**, that the Mayor is hereby authorized and directed to execute an agreement, on behalf of the City of Dunkirk with the TAU KAPPA EPSILON, for the Cat/Dog Census, according to the above described terms; and, be it further

**RESOLVED**, that the Fiscal Affairs Officer is hereby directed to make the following budgetary changes:

**GENERAL FUND**

| <u>ACCOUNT NO.</u><br><u>DECREASE</u> | <u>DEPT.</u>             | <u>INCREASE</u> |          |
|---------------------------------------|--------------------------|-----------------|----------|
| 001-1010-4109                         | Contributions – Leg. Bd. |                 | \$500.00 |
| 001-3510-4136                         | ACO Contracted Services  | \$500.00        |          |

Councilman Michalski thanked Councilwoman Szukala for approaching Tau Kappa Epsilon fraternity to work on the Census stating that in the long run, this will help the City and our dog catcher.

Councilman Muldowney also complimented Councilwoman Szulaka.

Carried, all voting aye.



**RESOLUTION #74-2010**  
**OCTOBER 19, 2010**

**BY: ENTIRE COUNCIL**

**RESOLUTION CHANGING THE COMMON COUNCIL  
MEETING DATE AND TIME FOR THE FIRST MEETING IN NOVEMBER, 2010**

**WHEREAS**, the Common Council wishes to change the time of their first meeting in November, and

**WHEREAS**, the workshop will begin at 5:30 PM with the meeting starting at 6:00 PM, and

**WHEREAS**, the Tuesday, November 2nd meeting will be changed to Monday, November 1st due to Election Day, now, therefore, be it

**RESOLVED**, that the November 2nd meeting be changed to November 1st due to Election Day; and, be it further

**RESOLVED**, that the November 1st Common Council workshop will begin at 5:30 PM, and the meeting will begin at 6:00 PM.

Councilman-at-large Dolce advised residents that the November 1<sup>st</sup> Council meeting is the only meeting being changed to the new time slot via this Resolution, that all other meetings will continue to operate under the 6:30 PM & 7:00 PM time slots until the City receives approval notification from the State Office to switch Council meetings to the new time.

Carried, all voting aye.

**RESOLUTION #75-2010**  
**OCTOBER 19, 2010**

**BY: ENTIRE COUNCIL**

**EXTENDING THE DEADLINE FOR THE MAYOR'S 2011 PROPOSED BUDGET**

**WHEREAS**, Article V Budget, Section 5.02 Submission of Budget – Message, of the City Charter states the Mayor is to have his proposed budget and capital, together with a budget message submitted to the Common Council on or before the 14<sup>th</sup> day of October; and

**WHEREAS**, the Mayor has asked the Common Council for an extension until October 22<sup>nd</sup>, 2010, to have his proposed budget and message submitted; now, therefore, be it

**RESOLVED**, that the Common Council hereby grants a one-time extension to the Mayor, to submit his proposed budget and capital, together with a budget message, on or before October 22<sup>nd</sup>, 2010.

Councilman-at-large Dolce asked City Attorney Cerrie to explain what went into this Resolution and why Council is accepting it.

City Attorney Cerrie explained that this Resolution is retroactive and that the Mayor had given plenty of notice requesting an extension on the budget. City Attorney Cerrie further stated that the Council had approved the extension via phone conversations, and e-mails and stated that asking for the extension via a Resolution is just a formality.

Councilman-at-large Dolce inquired about future extensions.

City Attorney Cerrie replied that this was a timing issue, otherwise a special meeting would have had to been called in regards to the budget.

Carried, all voting aye.

**ADJOURNMENT:**

Councilwoman Szukala moved to adjourn. Seconded by Councilman Michalski.

Carried, all voting aye.

**Adjourned at 7:28 PM**

**William D. Tuggle, City Clerk**

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